

AMENDED IN SENATE APRIL 21, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 24

Introduced by Senator Hill

December 1, 2014

An act to amend Sections 22950.5, 22951, 22952, 22956, 22958, 22960, 22961, 22962, 22963, 22970.2, 22971, 22972, 22973, 22974, 22974.7, 22980, 22980.1, 22980.2, 22980.3, and 22980.4 of, and to add Section 22950.1 to, the Business and Professions Code, to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Section 7597 of the Government Code, to amend Sections 1234, 1286, 1530.7, 1596.795, 104495, 113953.3, 113977, 113978, 114332.3, 114371, 118910, 118925, 118930, 118935, ~~and 118948~~ 118498, ~~and 119405~~ of, and to add Section 119406 to, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Sections 308 and 640 of the Penal Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Sections 12523 and 12523.5 of the Vehicle Code, relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as amended, Hill. Electronic cigarettes: licensing and restrictions.

(1) Existing law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for distributors and retailers relating to tobacco sales to ~~minors~~ *persons under 18 years of age*. Existing law makes it a crime, punishable by a fine not to exceed \$500 or by imprisonment not exceeding 30 days in a county jail, to fail to post a notice, at each point of purchase, stating that the sale of tobacco products to ~~minors~~ *persons under 18 years of age* is illegal. Existing

law also permits enforcing agencies to assess various civil penalties for violations of the STAKE Act.

This bill would extend the applicability of the STAKE Act's provisions to persons under 21 years of age. The bill would extend the requirements of the STAKE Act to the sale of electronic cigarettes to ~~minors~~ persons under 21 years of age. The bill would require the State Department of Public Health to enforce the STAKE Act's provisions with regard to sales of electronic cigarettes commencing July 1, 2016.

The bill would make the failure to post a notice, on and after July 1, 2016, at each point of purchase, stating that the sale of electronic cigarettes to ~~minors~~ persons under 21 years of age is illegal, a crime. By expanding the scope of existing crimes, the bill would impose a state-mandated local program.

The bill would provide that the STAKE Act does not invalidate existing local government ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products, or prohibit local governments from adopting ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products that are more restrictive than state law.

(2) Existing law prohibits a person from selling or otherwise furnishing an electronic cigarette to minors, and makes a violation punishable as an infraction.

The bill would prohibit a person from selling or otherwise furnishing an electronic cigarette to persons under 21 years of age. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The bill would require that cartridges for electronic cigarettes and solutions for filling electronic cigarettes be in child-proof packaging to protect children from opening and ingesting the contents.

(3) Existing law, the Cigarette and Tobacco Products Licensing Act, requires the State Board of Equalization to administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. Existing law makes a violation of the Cigarette and Tobacco Products Licensing Act a misdemeanor punishable by a fine not to exceed \$5,000, by imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. Existing law also permits the State Board of Equalization to assess various civil penalties for violations of the Cigarette and Tobacco Products Licensing Act.

The bill would require retailers to apply for a license to sell electronic cigarettes commencing July 1, 2016, and to display the license at each retail location commencing September 30, 2016. The bill would require the State Board of Equalization to administer a statewide program to license retailers of electronic cigarettes. The bill would also make retailers of electronic cigarettes subject to various civil and criminal penalties if they fail to comply with licensing requirements.

(4) Existing law prohibits the smoking of cigarettes and other tobacco products in a variety of specified areas. Under existing law, a violation of some of these provisions is punishable as a crime.

This bill would prohibit the use of electronic cigarettes in a variety of specified areas where the smoking of cigarettes and other tobacco products is prohibited. The bill would also make corresponding changes. The bill would make the use of electronic cigarettes in some of these restricted locations a violation punishable as a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22950.1 is added to the Business and
- 2 Professions Code, to read:
- 3 22950.1. Nothing in this division nor any other law shall be
- 4 construed to invalidate an existing ordinance of, or prohibit the
- 5 adoption of an ordinance by, a city or county that regulates the
- 6 distribution or sale of cigarettes, electronic cigarettes, or tobacco
- 7 products in a manner that is more restrictive than this division, to
- 8 the extent that the ordinance is not otherwise prohibited by federal
- 9 law.
- 10 SEC. 2. Section 22950.5 of the Business and Professions Code
- 11 is amended to read:
- 12 22950.5. For purposes of this division, the following terms
- 13 have the following meanings:
- 14 (a) "Department" means the State Department of Public Health.

(b) “Enforcing agency” means the State Department of Public Health, another state agency, including, but not limited to, the office of the Attorney General, or a local law enforcement agency, including, but not limited to, a city attorney, district attorney, or county counsel.

(c) “Electronic cigarette” has the same meaning as that term is defined in subdivision (b) of Section 119405 of the Health and Safety Code and shall also include any aerosol or vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette.

SEC. 3. Section 22951 of the Business and Professions Code is amended to read:

22951. The Legislature finds and declares that reducing and eventually eliminating the illegal purchase and consumption of tobacco products and electronic cigarettes by minors is critical to ensuring the long-term health of our state’s citizens. Accordingly, California must fully comply with federal regulations, particularly the “Synar Amendment,” that restrict tobacco sales to minors and require states to vigorously enforce their laws prohibiting the sale and distribution of tobacco products to persons under 18 years of age. Full compliance and vigorous enforcement of the “Synar Amendment” requires the collaboration of multiple state and local agencies that license, inspect, or otherwise conduct business with retailers, distributors, or wholesalers that sell tobacco.

SEC. 4. Section 22952 of the Business and Professions Code is amended to read:

22952. The State Department of Public Health shall do all of the following:

(a) Establish and develop a program to reduce the availability of tobacco products and electronic cigarettes to persons under ~~18~~ 21 years of age through the enforcement activities authorized by this division.

(b) Establish requirements that retailers of tobacco products or electronic cigarettes post conspicuously, at each point of purchase, a notice stating that selling tobacco products or electronic cigarettes to anyone under ~~18~~ 21 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products or electronic cigarettes check the identification of a purchaser of tobacco products or electronic

1 cigarettes who reasonably appears to be under ~~18~~ *21* years of age.
2 The warning signs shall include a toll-free telephone number to
3 the department for persons to report unlawful sales of tobacco
4 products or electronic cigarettes to ~~minors~~ *persons under 21 years*
5 *of age*.

6 (c) Provide that primary responsibility for enforcement of this
7 division shall be with the department. In carrying out its
8 enforcement responsibilities, the department shall conduct random,
9 onsite sting inspections at retail sites and shall enlist the assistance
10 of persons that are ~~15 and 16~~ *under 21* years of age in conducting
11 these enforcement activities. The department may conduct onsite
12 sting inspections in response to public complaints or at retail sites
13 where violations have previously occurred, and investigate illegal
14 sales of tobacco products or electronic cigarettes to ~~minors~~ *persons*
15 *under 21 years of age* by telephone, mail, or the Internet.
16 Participation in these enforcement activities by a person under ~~18~~
17 *21* years of age does not constitute a violation of subdivision (b)
18 of Section 308 of the Penal Code for the person under ~~18~~ *21* years
19 of age, and the person under ~~18~~ *21* years of age is immune from
20 prosecution thereunder, or under any other provision of law
21 prohibiting the purchase of these products by a person under ~~18~~
22 *21* years of age.

23 (d) In accordance with Chapter 3.5 (commencing with Section
24 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
25 the department shall adopt and publish guidelines for the use of
26 persons under ~~18~~ *21* years of age in inspections conducted pursuant
27 to subdivision (c) that shall include, but not be limited to, all of
28 the following:

29 (1) An enforcing agency may use persons under ~~18~~ *21* years of
30 age ~~who are 15 or 16 years of age~~ in random inspections to
31 determine if sales of cigarettes, electronic cigarettes, or other
32 tobacco products are being made to persons under ~~18~~ *21* years of
33 age.

34 (2) A photograph or video recording of the person under ~~18~~ *21*
35 years of age shall be taken prior to each inspection or shift of
36 inspections and retained by the enforcing agency for purposes of
37 verifying appearances.

38 (3) An enforcing agency may use video recording equipment
39 when conducting the inspections to record and document illegal
40 sales or attempted sales.

1 (4) The person under ~~18~~ 21 years of age, if questioned about
2 his or her age, need not state his or her actual age but shall present
3 a true and correct identification if verbally asked to present it. Any
4 failure on the part of the person under ~~18~~ 21 years of age to provide
5 true and correct identification, if verbally asked for it, shall be a
6 defense to an action pursuant to this section.

7 (5) The person under ~~18~~ 21 years of age shall be under the
8 supervision of a regularly employed peace officer during the
9 inspection.

10 (6) All persons under ~~18~~ 21 years of age used in this manner by
11 an enforcing agency shall display the appearance of a person under
12 ~~18~~ 21 years of age. It shall be a defense to an action under this
13 division that the person's appearance was not that which could be
14 generally expected of a person under ~~18~~ 21 years of age, under the
15 actual circumstances presented to the seller of the cigarettes,
16 electronic cigarettes, or other tobacco products at the time of the
17 alleged offense.

18 (7) Following the completion of the sale, the peace officer
19 accompanying the person under ~~18~~ 21 years of age shall reenter
20 the retail establishment and shall inform the seller of the random
21 inspection. Following an attempted sale, the enforcing agency shall
22 notify the retail establishment of the inspection.

23 (8) Failure to comply with the procedures set forth in this
24 subdivision shall be a defense to an action brought pursuant to this
25 section.

26 (e) Be responsible for ensuring and reporting the state's
27 compliance with Section 1926 of Title XIX of the federal Public
28 Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing
29 regulations adopted in relation thereto by the United States
30 Department of Health and Human Services. A copy of this report
31 shall be made available to the Governor and the Legislature.

32 (f) Provide that any civil penalties imposed pursuant to Section
33 22958 shall be enforced against the owner or owners of the retail
34 business and not the employees of the business.

35 (g) The amendments made to this section by the act adding this
36 subdivision shall become operative on July 1, 2016.

37 SEC. 5. Section 22956 of the Business and Professions Code
38 is amended to read:

39 22956. All persons engaging in the retail sale of tobacco
40 products or electronic cigarettes shall check the identification of

1 purchasers of those items, to establish the age of the purchaser, if
2 the purchaser reasonably appears to be under ~~18~~ 21 years of age.

3 SEC. 6. Section 22958 of the Business and Professions Code
4 is amended to read:

5 22958. (a) An enforcing agency may assess civil penalties
6 against any person, firm, or corporation that sells, gives, or in any
7 way furnishes to another person who is under ~~the age of 18~~ 21
8 years *of age*, any tobacco, cigarette, electronic cigarette, cigarette
9 papers, any other instrument or paraphernalia that is designed for
10 the smoking or ingestion of tobacco, products prepared from
11 tobacco, or any controlled substance, according to the following
12 schedule: (1) a civil penalty of from four hundred dollars (\$400)
13 to six hundred dollars (\$600) for the first violation, (2) a civil
14 penalty of from nine hundred dollars (\$900) to one thousand dollars
15 (\$1,000) for the second violation within a five-year period, (3) a
16 civil penalty of from one thousand two hundred dollars (\$1,200)
17 to one thousand eight hundred dollars (\$1,800) for a third violation
18 within a five-year period, (4) a civil penalty of from three thousand
19 dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth
20 violation within a five-year period, or (5) a civil penalty of from
21 five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for
22 a fifth violation within a five-year period.

23 (b) (1) In addition to the civil penalties described in subdivision
24 (a), upon the assessment of a civil penalty for the third, fourth, or
25 fifth violation, the department, within 60 days of the date of service
26 of the final administrative adjudication on the parties or payment
27 of the civil penalty for an uncontested violation, shall notify the
28 State Board of Equalization of the violation. The State Board of
29 Equalization shall then assess a civil penalty of two hundred fifty
30 dollars (\$250) and suspend or revoke a license issued pursuant to
31 Chapter 2 (commencing with Section 22972) of Division 8.6 in
32 accordance with the following schedule:

33 (A) A 45-day suspension of the license for a third violation at
34 the same location within a five-year period.

35 (B) A 90-day suspension of the license for a fourth violation at
36 the same location within a five-year period.

37 (C) Revocation of the license for a fifth violation at the same
38 location within a five-year period.

39 (2) The provisions of Chapter 4 (commencing with Section
40 55121) of Part 30 of Division 2 of the Revenue and Taxation Code

1 apply with respect to the collection of the penalty imposed by the
2 State Board of Equalization pursuant to paragraph (1).

3 (c) (1) For each suspension or revocation pursuant to
4 subdivision (b), the civil penalty of two hundred fifty dollars (\$250)
5 assessed pursuant to that subdivision, notwithstanding Section
6 22953, shall be deposited into the Cigarette and Tobacco Products
7 Compliance Fund established pursuant to Section 22990. Moneys
8 from that civil penalty deposited into this fund shall be made
9 available to the State Board of Equalization, upon appropriation
10 by the Legislature, for the purposes of meeting its duties under
11 subdivision (b).

12 (2) The department shall, upon request, provide to the State
13 Board of Equalization information concerning any person, firm,
14 or corporation that has been assessed a civil penalty for violation
15 of the STAKE Act pursuant to this section when the department
16 has notified the State Board of Equalization of the violation.

17 (d) The enforcing agency shall assess penalties pursuant to the
18 schedule set forth in subdivision (a) against a person, firm, or
19 corporation that sells, offers for sale, or distributes tobacco products
20 or electronic cigarettes from a cigarette or tobacco products vending
21 machine, or a person, firm, or corporation that leases, furnishes,
22 or services these machines in violation of Section 22960.

23 (e) An enforcing agency may assess civil penalties against a
24 person, firm, or corporation that sells or deals in tobacco or any
25 preparation thereof, and fails to post conspicuously and keep posted
26 in the place of business at each point of purchase the notice
27 required pursuant to subdivision (b) of Section 22952. The civil
28 penalty shall be in the amount of two hundred dollars (\$200) for
29 the first offense and five hundred dollars (\$500) for each additional
30 violation.

31 (f) An enforcing agency shall assess penalties in accordance
32 with the schedule set forth in subdivision (a) against a person, firm,
33 or corporation that advertises or causes to be advertised a tobacco
34 product or electronic cigarette on an outdoor billboard in violation
35 of Section 22961.

36 (g) If a civil penalty has been assessed pursuant to this section
37 against a person, firm, or corporation for a single, specific violation
38 of this division, the person, firm, or corporation shall not be
39 prosecuted under Section 308 of the Penal Code for a violation
40 based on the same facts or specific incident for which the civil

1 penalty was assessed. If a person, firm, or corporation has been
2 prosecuted for a single, specific violation of Section 308 of the
3 Penal Code, the person, firm, or corporation shall not be assessed
4 a civil penalty under this section based on the same facts or specific
5 incident upon which the prosecution under Section 308 of the Penal
6 Code was based.

7 (h) (1) In the case of a corporation or business with more than
8 one retail location, to determine the number of accumulated
9 violations for purposes of the penalty schedule set forth in
10 subdivision (a), violations of this division by one retail location
11 shall not be accumulated against other retail locations of that same
12 corporation or business.

13 (2) In the case of a retail location that operates pursuant to a
14 franchise as defined in Section 20001, violations of this division
15 accumulated and assessed against a prior owner of a single
16 franchise location shall not be accumulated against a new owner
17 of the same single franchise location for purposes of the penalty
18 schedule set forth in subdivision (a).

19 (i) Proceedings under this section shall be conducted pursuant
20 to Section 131071 of the Health and Safety Code, except in cases
21 where a civil penalty is assessed by an enforcing agency other than
22 the department, in which case proceedings shall be conducted
23 pursuant to the procedures of that agency that are consistent with
24 Section 131071 of the Health and Safety Code.

25 SEC. 7. Section 22960 of the Business and Professions Code
26 is amended to read:

27 22960. (a) Except as provided in subdivision (b), a cigarette,
28 electronic cigarette, or tobacco product shall not be sold, offered
29 for sale, or distributed from a vending machine or appliance, or
30 any other coin or token operated mechanical device designed or
31 used for vending purposes, including, but not limited to, machines
32 or devices that use remote control locking mechanisms.

33 (b) (1) Cigarette, electronic cigarette, or tobacco product
34 vending machines or appliances may be located at least 15 feet
35 away from the entrance of a premise issued an on-sale public
36 premises license as defined in Section 23039 by the Department
37 of Alcoholic Beverage Control to sell alcoholic beverages.

38 (2) As used in this subdivision “at least 15 feet away from the
39 entrance” means within the premises of the licensed establishment
40 and not outside those premises.

(c) This section and subdivision (b) of Section 22958 set forth minimum state restrictions on the sale of cigarettes, electronic cigarettes, or tobacco products from vending machines or devices and do not preempt or otherwise prohibit the adoption of a local standard that further restricts access to and reduces the availability of cigarettes, electronic cigarettes, or tobacco products from vending machines or devices or that imposes a complete ban on the sale of cigarettes or tobacco products from vending machines or devices. A local standard that further restricts or imposes a complete ban on the sale of cigarettes, electronic cigarettes, or tobacco products from vending machines or devices shall control in the event of an inconsistency between this section and a local standard.

(d) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2016.

SEC. 8. Section 22961 of the Business and Professions Code is amended to read:

22961. (a) No person, firm, corporation, partnership, or other organization shall advertise or cause to be advertised any tobacco products or electronic cigarettes on any outdoor billboard located within 1,000 feet of any public or private elementary school, junior high school, or high school, or public playground.

(b) This section sets forth minimum state restrictions on the advertisement of any tobacco products or electronic cigarettes on outdoor billboards near schools and public playgrounds and does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive or complete ban on billboard advertising or on tobacco-related billboard advertising. A local standard that imposes a more restrictive or complete ban on billboard advertising or on tobacco-related billboard advertising shall control in the event of any inconsistency between this section and a local standard.

(c) This section shall not be construed to prohibit the display of a message or advertisement opposing the use of tobacco products or electronic cigarettes. However, this subdivision shall not be construed to permit an advertisement promoting the use of tobacco products or electronic cigarettes by including a message opposing the use of tobacco products or electronic cigarettes within that advertisement.

SEC. 9. Section 22962 of the Business and Professions Code is amended to read:

22962. (a) For purposes of this section, the following terms have the following meanings:

(1) “Self-service display” means the open display of electronic cigarettes, tobacco products, or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

(2) “Tobacco paraphernalia” means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

(3) “Tobacco product” means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(4) “Tobacco store” means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products or electronic cigarettes.

(B) Generates more than 60 percent of its gross revenues annually from the sale of electronic cigarettes, tobacco products, and tobacco paraphernalia.

(C) Does not permit any person under ~~18~~ 21 years of age to be present or enter the premises at any time, unless accompanied by the person’s parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) (1) (A) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products or electronic cigarettes to sell, offer for sale, or display for sale any electronic cigarette, tobacco product, or tobacco paraphernalia by self-service display. A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(B) A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(2) It is unlawful for a person engaged in the retail sale of blunt wraps to place or maintain, or to cause to be placed or maintained, any blunt wraps advertising display within two feet of candy, snack, or nonalcoholic beverage displayed inside any store or business.

(3) It is unlawful for any person or business to place or maintain, or cause to be placed or maintained, any blunt wrap advertising display that is less than four feet above the floor.

(c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in this subdivision.

(d) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(e) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products or electronic cigarettes than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products or electronic cigarettes, the greater restriction on the access to tobacco products or electronic cigarettes in the local standard shall prevail.

SEC. 10. Section 22963 of the Business and Professions Code is amended to read:

22963. (a) The sale, distribution, or nonsale distribution of tobacco products or electronic cigarettes directly or indirectly to any person under the age of 18 ~~21~~ years *of age* through the United States Postal Service or through any other public or private postal or package delivery service at locations, including, but not limited to, public mailboxes and mailbox stores, is prohibited.

(b) Any person selling or distributing, or engaging in the nonsale distribution of, tobacco products or electronic cigarettes directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service,

1 including orders placed by mail, telephone, facsimile transmission,
2 or the Internet, shall comply with the following provisions:

3 (1) (A) Before enrolling a person as a customer, or distributing
4 or selling, or engaging in the nonsale distribution of, the tobacco
5 product or electronic cigarette through any of these means, the
6 distributor or seller shall verify that the purchaser or recipient of
7 the product is ~~18~~ 21 years of age or older. The distributor or seller
8 shall attempt to match the name, address, and date of birth provided
9 by the customer to information contained in records in a database
10 of individuals whose age has been verified to be ~~18~~ 21 years or
11 older by reference to an appropriate database of government records
12 kept by the distributor, a direct marketing firm, or any other entity.
13 In the case of a sale, the distributor or seller shall also verify that
14 the billing address on the check or credit card offered for payment
15 by the purchaser matches the address listed in the database.

16 (B) If the seller, distributor, or nonsale distributor, is unable to
17 verify that the purchaser or recipient is ~~18~~ 21 years of age or older
18 pursuant to subparagraph (A), he or she shall require the customer
19 or recipient to submit an age-verification kit consisting of an
20 attestation signed by the customer or recipient that he or she is ~~18~~
21 21 years of age or older and a copy of a valid form of government
22 identification. For the purposes of this section, a valid form of
23 government identification includes a driver's license, state
24 identification card, passport, an official naturalization or
25 immigration document, such as an alien registration receipt card
26 (commonly known as a "green card") or an immigrant visa, or
27 military identification. In the case of a sale, the distributor or seller
28 shall also verify that the billing address on the check or credit card
29 provided by the consumer matches the address listed in the form
30 of government identification.

31 (2) In the case of a sale, the distributor or seller shall impose a
32 two-carton minimum on each order of cigarettes, and shall require
33 payment for the purchase of any tobacco product or electronic
34 cigarette to be made by personal check of the purchaser or the
35 purchaser's credit card. No money order or cash payment shall be
36 received or permitted. The distributor or seller shall submit to each
37 credit card acquiring company with which it has credit card sales
38 identification information in an appropriate form and format so
39 that the words "tobacco product" or "electronic cigarette" may be
40 printed in the purchaser's credit card statement when a purchase

1 of a tobacco product or electronic cigarette is made by credit card
2 payment.

3 (3) In the case of a sale, the distributor or seller shall make a
4 telephone call after 5 p.m. to the purchaser confirming the order
5 prior to shipping the tobacco products or electronic cigarettes. The
6 telephone call may be a person-to-person call or a recorded
7 message. The distributor or seller is not required to speak directly
8 with a person and may leave a message on an answering machine
9 or by voice mail.

10 (4) The nonsale distributor shall deliver the tobacco product or
11 electronic cigarette to the recipient's verified mailing address, or
12 in the case of a sale, the seller or distributor shall deliver the
13 tobacco product or electronic cigarette to the purchaser's verified
14 billing address on the check or credit card used for payment. No
15 delivery described under this section shall be permitted to any post
16 office box.

17 (c) Notwithstanding subdivisions (a) and (b), if a seller,
18 distributor, or nonsale distributor, complies with all of the
19 requirements of this section and ~~a minor~~ *person under 21 years of*
20 *age* obtains a tobacco product or electronic cigarette by any of the
21 means described in subdivision (b), the seller, distributor, or
22 nonsale distributor is not in violation of this section.

23 (d) For the purposes of the enforcement of this section pursuant
24 to Section 22958, the acts of the United States Postal Service or
25 other common carrier when engaged in the business of transporting
26 and delivering packages for others, and the acts of a person,
27 whether compensated or not, who transports or delivers a package
28 for another person without any reason to know of the package's
29 contents, are not unlawful and are not subject to civil penalties.

30 (e) (1) (A) For the purposes of this section, a "distributor" is
31 any person or entity, within or outside the state, who agrees to
32 distribute tobacco products or electronic cigarettes to a customer
33 or recipient within the state. The United States Postal Service or
34 any other public or private postal or package delivery service are
35 not distributors within the meaning of this section.

36 (B) A "nonsale distributor" is any person inside or outside of
37 this state who, directly or indirectly, knowingly provides tobacco
38 products or electronic cigarettes to any person in this state as part
39 of a nonsale transaction. "Nonsale distributor" includes the person
40 or entity who provides the tobacco product or electronic cigarette

1 for delivery and the person or entity who delivers the product to
2 the recipient as part of a nonsale transaction.

3 (C) “Nonsale distribution” means to give electronic cigarettes,
4 smokeless tobacco, or cigarettes to the general public at no cost,
5 or at nominal cost, or to give coupons, coupon offers, gift
6 certificates, gift cards, or other similar offers, or rebate offers for
7 electronic cigarettes, smokeless tobacco, or cigarettes to the general
8 public at no cost or at nominal cost. Distribution of electronic
9 cigarettes, tobacco products, coupons, coupon offers, gift
10 certificates, gift cards, or other similar offers, or rebate offers in
11 connection with the sale of another item, including electronic
12 cigarettes, tobacco products, cigarette lighters, magazines, or
13 newspapers shall not constitute nonsale distribution.

14 (2) For the purpose of this section, a “seller” is any person or
15 entity, within or outside the state, who agrees to sell tobacco
16 products or electronic cigarettes to a customer within the state.
17 The United States Postal Service or any other public or private
18 postal or package delivery service are not sellers within the
19 meaning of this section.

20 (3) For the purpose of this section, a “carton” is a package or
21 container that contains 200 cigarettes.

22 (f) A district attorney, city attorney, or the Attorney General
23 may assess civil penalties against any person, firm, corporation,
24 or other entity that violates this section, according to the following
25 schedule:

26 (1) A civil penalty of not less than one thousand dollars (\$1,000)
27 and not more than two thousand dollars (\$2,000) for the first
28 violation.

29 (2) A civil penalty of not less than two thousand five hundred
30 dollars (\$2,500) and not more than three thousand five hundred
31 dollars (\$3,500) for the second violation.

32 (3) A civil penalty of not less than four thousand dollars (\$4,000)
33 and not more than five thousand dollars (\$5,000) for the third
34 violation within a five-year period.

35 (4) A civil penalty of not less than five thousand five hundred
36 dollars (\$5,500) and not more than six thousand five hundred
37 dollars (\$6,500) for the fourth violation within a five-year period.

38 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth
39 or subsequent violation within a five-year period.

1 SEC. 11. Section 22970.2 of the Business and Professions
2 Code is amended to read:

3 22970.2. The board shall administer a statewide program to
4 license manufacturers, importers, distributors, wholesalers, and
5 retailers of cigarettes and tobacco products, and retailers of
6 electronic cigarettes.

7 SEC. 12. Section 22971 of the Business and Professions Code
8 is amended to read:

9 22971. For purposes of this division, the following terms shall
10 have the following meanings:

11 (a) "Board" means the State Board of Equalization.

12 (b) "Brand family" has the same meaning as that term is defined
13 in paragraph (2) of subdivision (a) of Section 30165.1 of the
14 Revenue and Taxation Code.

15 (c) (1) "Cigarette" means a cigarette as defined in Section 30003
16 of the Revenue and Taxation Code.

17 (2) "Electronic cigarette" means a device as defined in
18 subdivision (c) of Section 22950.5.

19 (d) (1) "Control" or "controlling" means possession, direct or
20 indirect, of the power:

21 (A) To vote 25 percent or more of any class of the voting
22 securities issued by a person.

23 (B) To direct or cause the direction of the management and
24 policies of a person, whether through the ownership of voting
25 securities, by contract, other than a commercial contract for goods
26 or nonmanagement services, or as otherwise provided; however,
27 no individual shall be deemed to control a person solely on account
28 of being a director, officer, or employee of that person.

29 (2) For purposes of subparagraph (B) of paragraph (1), a person
30 who, directly or indirectly, owns, controls, holds, with the power
31 to vote, or holds proxies representing 10 percent or more of the
32 then outstanding voting securities issued by another person, is
33 presumed to control that other person.

34 (3) For purposes of this division, the board may determine
35 whether a person in fact controls another person.

36 (e) "Display for sale" means the placement of cigarettes,
37 electronic cigarettes, or tobacco products in a vending machine or
38 in retail stock for the purpose of selling or gifting the cigarettes,
39 electronic cigarettes, or tobacco products. For purposes of this
40 definition, the clear and easily visible display of cigarettes,

1 electronic cigarettes, or tobacco products shall create a rebuttable
2 presumption that the products were displayed for sale.

3 (f) “Distributor” means a distributor as defined in Section 30011
4 of the Revenue and Taxation Code.

5 (g) “Gifting” means any transfer of title or possession without
6 consideration, exchange, or barter, in any manner or by any means,
7 of cigarettes, electronic cigarettes, or tobacco products that have
8 been purchased for resale under a license issued pursuant to this
9 division if the transfer occurs while the license is suspended or
10 after the effective date of its revocation.

11 (h) “Importer” means an importer as defined in Section 30019
12 of the Revenue and Taxation Code.

13 (i) “Law enforcement agency” means a sheriff, a police
14 department, or a city, county, or city and county agency or
15 department designated by the governing body of that agency to
16 enforce this chapter or to enforce local smoking and tobacco
17 ordinances and regulations.

18 (j) “License” means a license issued by the board pursuant to
19 this division.

20 (k) “Licensee” means any person holding a license issued by
21 the board pursuant to this division.

22 (l) “Manufacturer” means a manufacturer of cigarettes or
23 tobacco products sold in this state.

24 (m) “Notice” or “notification” means, unless as otherwise
25 provided, the written notice or notification provided to a licensee
26 by the board by either actual delivery to the licensee or by
27 first-class mail addressed to the licensee at the address on the
28 license.

29 (n) “Package of cigarettes” means a package as defined in
30 Section 30015 of the Revenue and Taxation Code.

31 (o) “Person” means a person as defined in Section 30010 of the
32 Revenue and Taxation Code.

33 (p) “Retailer” means a person who engages in this state in the
34 sale of cigarettes, electronic cigarettes, or tobacco products directly
35 to the public from a retail location. Retailer includes a person who
36 operates vending machines from which cigarettes, electronic
37 cigarettes, or tobacco products are sold in this state.

38 (q) “Retail location” means both of the following:

39 (1) Any building from which cigarettes, electronic cigarettes,
40 or tobacco products are sold at retail.

1 (2) A vending machine.

2 (r) “Sale” or “sold” means a sale as defined in Section 30006
3 of the Revenue and Taxation Code.

4 (s) “Tobacco products” means tobacco products as defined in
5 subdivision (b) of Section 30121 and subdivision (b) of Section
6 30131.1 of the Revenue and Taxation Code.

7 (t) “Unstamped package of cigarettes” means a package of
8 cigarettes that does not bear a tax stamp as required under Part 13
9 (commencing with Section 30001) of Division 2 of the Revenue
10 and Taxation Code, including a package of cigarettes that bears a
11 tax stamp of another state or taxing jurisdiction, a package of
12 cigarettes that bears a counterfeit tax stamp, or a stamped or
13 unstamped package of cigarettes that is marked “Not for sale in
14 the United States.”

15 (u) “Wholesaler” means a wholesaler as defined in Section
16 30016 of the Revenue and Taxation Code.

17 SEC. 13. Section 22972 of the Business and Professions Code
18 is amended to read:

19 22972. (a) A retailer shall have in place and maintain a license
20 to engage in the sale of cigarettes, electronic cigarettes, or tobacco
21 products. A retailer that owns or controls more than one retail
22 location shall obtain a separate license for each retail location, but
23 may submit a single application for those licenses.

24 (b) The retailer shall conspicuously display the license at each
25 retail location in a manner visible to the public.

26 (c) A license is not assignable or transferable. A person who
27 obtains a license as a retailer who ceases to do business as specified
28 in the license, or who never commenced business, or whose license
29 is suspended or revoked, shall immediately surrender the license
30 to the board.

31 (d) A license shall be valid for a 12-month period, and shall be
32 renewed annually.

33 (e) The amendments made to this section by the act adding this
34 subdivision that require the licensure of a retail seller of electronic
35 cigarettes shall become operative on September 30, 2016.

36 SEC. 14. Section 22973 of the Business and Professions Code
37 is amended to read:

38 22973. (a) An application for a license shall be filed on a form
39 prescribed by the board and shall include the following:

40 (1) The name, address, and telephone number of the applicant.

1 (2) The business name, address, and telephone number of each
2 retail location. For applicants who control more than one retail
3 location, an address for receipt of correspondence or notices from
4 the board, such as a headquarters or corporate office of the retailer,
5 shall also be included on the application and listed on the license.
6 Citations issued to licensees shall be forwarded to all addressees
7 on the license.

8 (3) A statement by the applicant affirming that the applicant
9 has not been convicted of a felony and has not violated and will
10 not violate or cause or permit to be violated any of the provisions
11 of this division or any rule of the board applicable to the applicant
12 or pertaining to the manufacture, sale, or distribution of cigarettes
13 or tobacco products, or manufacture or sale of electronic cigarettes.
14 If the applicant is unable to affirm this statement, the application
15 shall contain a statement by the applicant of the nature of any
16 violation or the reasons that will prevent the applicant from
17 complying with the requirements with respect to the statement.

18 (4) If any other licenses or permits have been issued by the
19 board or the Department of Alcoholic Beverage Control to the
20 applicant, the license or permit number of those licenses or permits
21 then in effect.

22 (5) A statement by the applicant that the contents of the
23 application are complete, true, and correct. Any person who signs
24 a statement pursuant to this subdivision that asserts the truth of
25 any material matter that he or she knows to be false is guilty of a
26 misdemeanor punishable by imprisonment of up to one year in the
27 county jail, or a fine of not more than one thousand dollars
28 (\$1,000), or both the imprisonment and the fine.

29 (6) The signature of the applicant.

30 (7) Any other information the board may require.

31 (b) The board may investigate to determine the truthfulness and
32 completeness of the information provided in the application. The
33 board may issue a license without further investigation to an
34 applicant for a retail location if the applicant holds a valid license
35 from the Department of Alcoholic Beverage Control for that same
36 location.

37 (c) The board shall provide electronic means for applicants to
38 download and submit applications.

39 (d) (1) A one-time license fee of one hundred dollars (\$100)
40 shall be submitted with each application. An applicant that owns

1 or controls more than one retail location shall obtain a separate
2 license for each retail location, but may submit a single application
3 for those licenses with a one-time license fee of one hundred dollars
4 (\$100) per location.

5 (2) The one-time fee required by this subdivision does not apply
6 to an application for renewal of a license for a retail location for
7 which the one-time license fee has already been paid. If a license
8 is reinstated after its expiration, the retailer, as a condition
9 precedent to its reinstatement, shall pay a reinstatement fee of one
10 hundred dollars (\$100).

11 (e) The amendments made to this section by the act adding this
12 subdivision shall become operative on July 1, 2016.

13 SEC. 15. Section 22974 of the Business and Professions Code
14 is amended to read:

15 22974. A retailer shall retain purchase invoices that meet the
16 requirements set forth in Section 22978.4 for all cigarettes or
17 tobacco products the retailer purchased for a period of four years.
18 The records shall be kept at the retail location for at least one year
19 after the purchase. Invoices shall be made available upon request
20 during normal business hours for review inspection and copying
21 by the board or by a law enforcement agency. Any retailer found
22 in violation of these requirements or any person who fails, refuses,
23 or neglects to retain or make available invoices for inspection and
24 copying in accordance with this section shall be subject to penalties
25 pursuant to Section 22981.

26 SEC. 16. Section 22974.7 of the Business and Professions
27 Code is amended to read:

28 22974.7. In addition to any other civil or criminal penalty
29 provided by law, upon a finding that a retailer has violated any
30 provision of this division, the board may take the following actions:

31 (a) In the case of the first offense, the board may revoke or
32 suspend the license or licenses of the retailer pursuant to the
33 procedures applicable to the revocation of a license set forth in
34 Section 30148 of the Revenue and Taxation Code.

35 (b) In the case of a second or any subsequent offense, in addition
36 to the action authorized under subdivision (a), the board may
37 impose a civil penalty in an amount not to exceed the greater of
38 either of the following:

39 (1) Five times the retail value of the seized cigarettes, electronic
40 cigarettes, or tobacco products.

1 (2) Five thousand dollars (\$5,000).

2 SEC. 17. Section 22980 of the Business and Professions Code
3 is amended to read:

4 22980. (a) (1) Any peace officer, or board employee granted
5 limited peace officer status pursuant to paragraph (6) of subdivision
6 (a) of Section 830.11 of the Penal Code, upon presenting
7 appropriate credentials, is authorized to enter any place as described
8 in paragraph (3) and to conduct inspections in accordance with the
9 following paragraphs, inclusive.

10 (2) Inspections shall be performed in a reasonable manner and
11 at times that are reasonable under the circumstances, taking into
12 consideration the normal business hours of the place to be entered.

13 (3) Inspections may be at any place at which cigarettes,
14 electronic cigarettes, or tobacco products are sold, produced, or
15 stored or at any site where evidence of activities involving evasion
16 of cigarette or tobacco products tax and violations of Section
17 30165.1 of the Revenue and Taxation Code may be discovered.

18 (4) Inspections shall be requested or conducted no more than
19 once in a 24-hour period.

20 (b) Any person that refuses to allow an inspection shall be
21 subject to the penalties imposed pursuant to Section 22981.

22 SEC. 18. Section 22980.1 of the Business and Professions
23 Code is amended to read:

24 22980.1. (a) A manufacturer or importer shall not sell
25 cigarettes or tobacco products to a distributor, wholesaler, retailer,
26 or any other person who is not licensed pursuant to this division
27 or whose license has been suspended or revoked.

28 (b) (1) Except as provided in paragraph (2), no distributor or
29 wholesaler shall sell cigarettes or tobacco products to a retailer,
30 wholesaler, distributor, or any other person who is not licensed
31 pursuant to this division or whose license has been suspended or
32 revoked.

33 (2) This subdivision does not apply to any sale of cigarettes or
34 tobacco products by a distributor, wholesaler, or any other person
35 to a retailer, wholesaler, distributor, or any other person that the
36 state, pursuant to the United States Constitution, the laws of the
37 United States, or the California Constitution, is prohibited from
38 regulating.

39 (c) No retailer, distributor, or wholesaler shall purchase packages
40 of cigarettes or tobacco products from a manufacturer or importer

1 who is not licensed pursuant to this division or whose license has
2 been suspended or revoked.

3 (d) (1) ~~No retailer,~~ *A retailer* or wholesaler shall *not* purchase
4 ~~cigarettes,~~ *cigarettes* or tobacco products from any person who is
5 not licensed pursuant to this division or whose license has been
6 suspended or revoked.

7 (2) Notwithstanding subdivision (c), ~~no~~ *a* distributor shall *not*
8 purchase cigarettes or tobacco products from any person who is
9 required to be licensed pursuant to this division but who is not
10 licensed or whose license has been suspended or revoked.

11 (e) Each separate sale to, or by, a retailer, wholesaler, distributor,
12 importer, manufacturer, or any other person who is not licensed
13 pursuant to this division shall constitute a separate violation.

14 (f) A manufacturer, distributor, wholesaler, or importer shall
15 not sell cigarettes or tobacco products to any retailer or wholesaler
16 whose license has been suspended or revoked unless all outstanding
17 debts of that retailer or wholesaler that are owed to a wholesaler
18 or distributor for cigarettes or tobacco products are paid and the
19 license of that retailer or wholesaler has been reinstated by the
20 board. Any payment received from a retailer or wholesaler shall
21 be credited first to the outstanding debt for cigarettes or tobacco
22 products and must be immediately reported to the board. The board
23 shall determine the debt status of a suspended retailer or wholesaler
24 licensee 25 days prior to the reinstatement of the license.

25 (g) ~~No~~ *An* importer, distributor, or wholesaler, or distributor
26 functioning as a wholesaler, or retailer, shall *not* purchase, obtain,
27 or otherwise acquire any package of cigarettes to which a stamp
28 or meter impression may not be affixed in accordance with
29 subdivision (b) of Section 30163 or subdivision (e) of Section
30 30165.1 of the Revenue and Taxation Code, or any cigarettes
31 obtained from a manufacturer or importer that cannot demonstrate
32 full compliance with all requirements of the federal Cigarette
33 Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for
34 the reporting of ingredients added to cigarettes.

35 (h) (1) Failure to comply with the provisions of this section
36 shall be a misdemeanor subject to penalties pursuant to Section
37 22981.

38 (2) Notwithstanding paragraph (1), a manufacturer or importer
39 who uses the most up-to-date licensing information provided by

1 the board on the board's Internet Web site to determine a person's
2 licensing status is presumed to be in compliance with this section.

3 SEC. 19. Section 22980.2 of the Business and Professions
4 Code is amended to read:

5 22980.2. (a) A person or entity that engages in the business
6 of selling cigarettes or tobacco products in this state, or a retailer
7 that engages in the business of selling cigarettes, electronic
8 cigarettes, or tobacco products in this state, either without a valid
9 license or after a license has been suspended or revoked, and each
10 officer of any corporation that so engages in this business, is guilty
11 of a misdemeanor punishable as provided in Section 22981.

12 (b) (1) Each day after notification by the board or by a law
13 enforcement agency that a manufacturer, wholesaler, distributor,
14 importer, retailer, or any other person required to be licensed under
15 this division offers cigarettes and tobacco products for sale or
16 exchange without a valid license for the location from which they
17 are offered for sale shall constitute a separate violation.

18 (2) Each day after notification by the board or by a law
19 enforcement agency that a retailer offers electronic cigarettes for
20 sale or exchange without a valid license for the location from which
21 they are offered for sale shall constitute a separate violation.

22 (c) (1) Continued sales or gifting of cigarettes and tobacco
23 products either without a valid license or after a notification of
24 suspension or revocation shall constitute a violation punishable as
25 provided in Section 22981, and shall result in the seizure of all
26 cigarettes and tobacco products in the possession of the person by
27 the board or a law enforcement agency. Any cigarettes and tobacco
28 products seized by the board or by a law enforcement agency shall
29 be deemed forfeited.

30 (2) Continued sale or gifting of electronic cigarettes by a retailer
31 either without a valid license or after a notification of suspension
32 or revocation shall constitute a violation punishable as provided
33 in Section 22981, and shall result in the seizure of all electronic
34 cigarettes in the possession of the person by the board or a law
35 enforcement agency. Any electronic cigarettes seized by the board
36 or by a law enforcement agency shall be forfeited.

37 SEC. 20. Section 22980.3 of the Business and Professions
38 Code is amended to read:

1 22980.3. (a) Licenses issued pursuant to this division shall be
2 subject to suspension or revocation for violations of this division
3 or the Revenue and Taxation Code as provided in this section.

4 (1) In addition to any applicable fines or penalties for a violation,
5 upon first conviction of a violation, a licensee shall receive a
6 written notice from the board detailing the suspension and
7 revocation provisions of this division. At its discretion, the board
8 may also suspend a license for up to 30 days.

9 (2) In addition to any applicable fines or penalties for a violation,
10 upon a second conviction of a violation within four years of a
11 previous violation, the license shall be revoked.

12 (b) The date of the occurrence of a violation shall be used to
13 calculate the duration between subsequent violations. A violation
14 shall be noted in the license record at the board only after judicial
15 conviction or final adjudication of a violation.

16 (c) Upon updating a record for a violation triggering a
17 suspension, the board shall serve the licensee with a notice of
18 suspension and shall order the licensee to cease the sale, gifting,
19 or displaying for sale of cigarettes or tobacco products for the
20 period of the suspension, and in the case of a licensee that is a
21 retailer, shall also order the retailer to cease the sale, gifting, or
22 displaying for sale of electronic cigarettes, for the period of the
23 suspension. The notice of suspension shall inform the licensee of
24 the effective dates of the suspension.

25 (d) Continued sales or gifting of cigarettes or tobacco products,
26 or electronic cigarettes in the case of a retailer, after the effective
27 date of the suspension shall constitute a violation of this division
28 and result in the revocation of a license.

29 (e) Upon completion of a suspension period, a license shall be
30 reinstated by the board upon certification that all outstanding debts
31 of that retailer or wholesaler that are owed to a wholesaler or
32 distributor for the purchase of cigarettes and tobacco products are
33 paid.

34 (f) Upon updating a record for a violation triggering a
35 revocation, the board shall serve the licensee with a notice of
36 revocation and shall order the licensee to cease the sale, gifting,
37 or displaying for sale of cigarettes or tobacco products, and in the
38 case of a licensee that is a retailer, shall also order the retailer to
39 cease the sale, gifting, or displaying for sale of electronic cigarettes,
40 on and after the effective date of the revocation. The notice of

1 revocation shall inform the licensee of the effective date of the
2 revocation.

3 (g) After a revocation, a previously licensed applicant may apply
4 for a new license after six months. The board may, at its discretion,
5 issue a new license.

6 (h) Upon updating a license record for a violation, suspension,
7 or revocation to a license of a person or entity that owns or controls
8 more than one location, the board shall send notice in writing of
9 the violations, suspensions, or revocations within 15 days of the
10 board's action to the address included in the application and listed
11 on the license for receipt of correspondence or notices from the
12 board.

13 (i) Upon suspension or revocation of a license pursuant to this
14 section, the board shall notify all licensed distributors and
15 wholesalers by electronic mail within 48 hours of the suspension
16 or revocation of that license. All licensed distributors and
17 wholesalers shall provide the board and shall update, as necessary,
18 an electronic mail address that the board can use for purposes of
19 making the notifications required by this subdivision.

20 (j) Violations by a licensee at one location may not be
21 accumulated against other locations of that same licensee.
22 Violations accumulated against a prior owner at a licensed location
23 may not be accumulated against a new owner at the same licensed
24 location.

25 (k) For purposes of this section, a violation includes violations
26 of the Revenue and Taxation Code relating to cigarettes and
27 tobacco products, and violations of this division. Only one violation
28 per discrete action shall be counted toward a suspension or
29 revocation of a license.

30 SEC. 21. Section 22980.4 of the Business and Professions
31 Code is amended to read:

32 22980.4. A person who, after receiving a notice of suspension
33 or revocation, continues to display for sale cigarettes or tobacco
34 products, or in the case of a retailer also continues to display for
35 sale electronic cigarettes, shall be subject to a civil penalty of one
36 thousand dollars (\$1,000) for each offense, and shall not be subject
37 to Section 22981.

38 SEC. 22. Section 1947.5 of the Civil Code is amended to read:

39 1947.5. (a) A landlord of a residential dwelling unit, as defined
40 in Section 1940, or his or her agent, may prohibit the smoking of

1 a cigarette, as defined in Section 104556 of the Health and Safety
2 Code, or other tobacco product, or *the* using *of* an electronic
3 cigarette, as defined in subdivision (c) of Section 22950.5 of the
4 Business and Professions Code, on the property or in any building
5 or portion of the building, including any dwelling unit, other
6 interior or exterior area, or the premises on which it is located, in
7 accordance with this article.

8 (b) (1) Every lease or rental agreement entered into on or after
9 January 1, 2012, for a residential dwelling unit on property on any
10 portion of which the landlord has prohibited the smoking of
11 cigarettes or other tobacco products, or using an electronic
12 cigarette, pursuant to this article shall include a provision that
13 specifies the areas on the property where smoking is prohibited,
14 or using an electronic cigarette is prohibited, if the lessee has not
15 previously occupied the dwelling unit.

16 (2) For a lease or rental agreement entered into before January
17 1, 2012, a prohibition against the smoking of cigarettes or other
18 tobacco products, or *the* using *of* an electronic cigarette, in any
19 portion of the property in which smoking or using an electronic
20 cigarette was previously permitted shall constitute a change of the
21 terms of tenancy, requiring adequate notice in writing, to be
22 provided in the manner prescribed in Section 827.

23 (c) A landlord who exercises the authority provided in
24 subdivision (a) to prohibit smoking or using an electronic cigarette
25 shall be subject to federal, state, and local requirements governing
26 changes to the terms of a lease or rental agreement for tenants with
27 leases or rental agreements that are in existence at the time that
28 the policy limiting or prohibiting smoking or using an electronic
29 cigarette is adopted.

30 (d) This section shall not be construed to preempt any local
31 ordinance in effect on or before January 1, 2012, or any provision
32 of a local ordinance in effect on or after January 1, 2012, that
33 restricts the smoking of cigarettes or other tobacco products, or
34 using an electronic cigarette.

35 (e) A limitation or prohibition of the use of any tobacco product
36 or the use of an electronic cigarette shall not affect any other term
37 or condition of the tenancy, nor shall this section be construed to
38 require statutory authority to establish or enforce any other lawful
39 term or condition of the tenancy.

1 SEC. 23. Section 48901 of the Education Code is amended to
2 read:

3 48901. (a) A school shall not permit the smoking or use of
4 tobacco, or any product containing tobacco or nicotine products,
5 or using an electronic cigarette as defined in subdivision (c) of
6 Section 22950.5 of the Business and Professions Code, by pupils
7 of the school while the pupils are on campus, or while attending
8 school-sponsored activities or while under the supervision and
9 control of school district employees.

10 (b) The governing board of any school district maintaining a
11 high school shall take all steps it deems practical to discourage
12 high school students from smoking or from using an electronic
13 cigarette.

14 SEC. 24. Section 7597 of the Government Code is amended
15 to read:

16 7597. (a) A public employee or member of the public shall
17 not smoke any tobacco product, or use an electronic cigarette as
18 defined in subdivision (c) of Section 22950.5 of the Business and
19 Professions Code, inside a public building, or in an outdoor area
20 within 20 feet of a main exit, entrance, or operable window of a
21 public building, or in a passenger vehicle, as defined by Section
22 465 of the Vehicle Code, owned by the state.

23 (b) This section does not preempt the authority of any county,
24 city, city and county, California Community College campus,
25 campus of the California State University, or campus of the
26 University of California to adopt and enforce additional smoking
27 and tobacco control, and electronic cigarette, ordinances,
28 regulations, or policies that are more restrictive than the applicable
29 standards required by this chapter.

30 SEC. 25. Section 1234 of the Health and Safety Code is
31 amended to read:

32 1234. (a) Smoking, or using an electronic cigarette as defined
33 in subdivision (c) of Section 22950.5 of the Business and
34 Professions Code, is prohibited in patient areas of a clinic except
35 those rooms designated for occupancy exclusively by smokers.

36 (b) Clearly legible signs shall either:

37 (1) State that smoking, or using an electronic cigarette, is
38 unlawful and be conspicuously posted by, or on behalf of, the
39 owner or manager of such clinic, in all areas of a clinic where
40 smoking, or using an electronic cigarette, is unlawful.

(2) Identify “smoking permitted” areas, and be posted by, or on behalf of, the owner or manager of such clinic, only in areas of a clinic where smoking, or using an electronic cigarette, is lawfully permitted.

If “smoking permitted” signs are posted, there shall also be conspicuously posted, near all major entrances, clearly legible signs stating that smoking, or using an electronic cigarette, is unlawful except in areas designated “smoking permitted.”

(c) This section shall not apply to skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the developmentally disabled.

SEC. 26. Section 1286 of the Health and Safety Code is amended to read:

1286. (a) Smoking, or using an electronic cigarette as defined in subdivision (c) of Section 22950.5 of the Business and Professions Code, is prohibited in patient care areas, waiting rooms, and visiting rooms of a health facility, except those areas specifically designated as smoking areas, and in patient rooms as specified in subdivision (b).

(b) Smoking, or using an electronic cigarette, shall not be permitted in a patient room unless all persons assigned to such room have requested a room where smoking, or using an electronic cigarette, is permitted. In the event that the health facility occupancy has reached capacity, the health facility shall have reasonable time to reassign patients to appropriate rooms.

(c) Clearly legible signs shall either:

(1) State that smoking, or using an electronic cigarette, is unlawful and be conspicuously posted by, or on behalf of, the owner or manager of such health facility, in all areas of a health facility where smoking, or using an electronic cigarette, is ~~unlawful~~, ~~or unlawful~~.

(2) Identify “smoking permitted” areas, and be posted by, or on behalf of, the owner or manager of such health facility, only in areas of the health facility where smoking, or using an electronic cigarette, is lawfully permitted.

If “smoking permitted” signs are posted, there shall also be conspicuously posted, near all major entrances, clearly legible signs stating that smoking, or using an electronic cigarette, is unlawful except in areas designated “smoking permitted.”

1 (d) No signs pertaining to smoking, or using an electronic
2 cigarette, are required to be posted in patient rooms.

3 (e) This section shall not apply to skilled nursing facilities,
4 intermediate care facilities, and intermediate care facilities for the
5 developmentally disabled.

6 SEC. 27. Section 1530.7 of the Health and Safety Code is
7 amended to read:

8 1530.7. (a) Group homes, foster family agencies, small family
9 homes, transitional housing placement providers, and crisis
10 nurseries licensed pursuant to this chapter shall maintain a
11 smoke-free environment, and an environment free of electronic
12 cigarettes as defined in subdivision (c) of Section 22950.5 of the
13 Business and Professions Code, in the facility.

14 (b) A person who is licensed or certified pursuant to this chapter
15 to provide residential care in a foster family home or certified
16 family home shall not smoke, or use an electronic cigarette, or
17 permit any other person to smoke, or use an electronic cigarette,
18 inside the facility, and, when the child is present, on the outdoor
19 grounds of the facility.

20 (c) A person who is licensed or certified pursuant to this chapter
21 to provide residential foster care shall not smoke, or use an
22 electronic cigarette, in any motor vehicle that is regularly used to
23 transport the child.

24 SEC. 28. Section 1596.795 of the Health and Safety Code is
25 amended to read:

26 1596.795. (a) The smoking of tobacco, or use of an electronic
27 cigarette as defined in subdivision (c) of Section 22950.5 of the
28 Business and Professions Code, in a private residence that is
29 licensed as a family day care home is prohibited in the home and
30 in those areas of the family day care home where children are
31 present. Nothing in this section shall prohibit a city or county from
32 enacting or enforcing an ordinance relating to smoking, or using
33 an electronic cigarette, in a family day care home if the ordinance
34 is more stringent than this section.

35 (b) The smoking of tobacco, or using an electronic cigarette,
36 on the premises of a licensed day care center is prohibited.

37 SEC. 29. Section 104495 of the Health and Safety Code is
38 amended to read:

39 104495. (a) For the purposes of this section, the following
40 definitions shall govern:

1 (1) “Playground” means any park or recreational area
2 specifically designed to be used by children that has play equipment
3 installed, or any similar facility located on public or private school
4 grounds, or on city, county, or state park grounds.

5 (2) “Tot lot sandbox area” means a designated play area within
6 a public park for the use by children under five years of age. Where
7 the area is not contained by a fence, the boundary of a tot lot
8 sandbox area shall be defined by the edge of the resilient surface
9 of safety material, such as concrete or wood, or any other material
10 surrounding the tot lot sandbox area.

11 (3) “Public park” includes a park operated by a public agency.

12 (4) “Smoke or smoking” means the carrying of a lighted pipe,
13 lighted cigar, or lighted cigarette of any kind, or the lighting of a
14 pipe, cigar, or cigarette of any kind, including, but not limited to,
15 tobacco, or any other weed or plant.

16 (5) “Cigarette” means the same as defined in Section 104556.

17 (6) “Cigar” means the same as defined in Section 104550.

18 (b) No person shall smoke a cigarette, cigar, or other
19 tobacco-related product, or use an electronic cigarette as defined
20 in subdivision (c) of Section 22950.5 of the Business and
21 Professions Code, within 25 feet of any playground or tot lot
22 sandbox area.

23 (c) No person shall dispose of cigarette butts, cigar butts, or
24 any other tobacco-related waste, or an electronic cigarette or related
25 waste, within 25 feet of a playground or a tot lot sandbox area.

26 (d) No person shall intimidate, threaten any reprisal, or effect
27 any reprisal, for the purpose of retaliating against another person
28 who seeks to attain compliance with this section.

29 (e) Any person who violates this section is guilty of an
30 infraction and shall be punished by a fine of two hundred fifty
31 dollars (\$250) for each violation of this section. Punishment under
32 this section shall not preclude punishment pursuant to Section
33 13002, Section 374.4 of the Penal Code, or any other provision of
34 law proscribing the act of littering.

35 (f) The prohibitions contained in subdivisions (b), (c), and (d)
36 shall not apply to private property.

37 (g) The prohibitions contained in subdivisions (b) and (c) shall
38 not apply to a public sidewalk located within 25 feet of a
39 playground or a tot lot sandbox area.

(h) This section does not preempt the authority of any county, city, or city and county to regulate smoking, or the use of an electronic cigarette, around playgrounds or tot lot sandbox areas. Any county, city, or city and county may enforce any ordinance adopted prior to January 1, 2002, or may adopt and enforce new regulations that are more restrictive than this section, on and after January 1, 2002.

SEC. 30. Section 113953.3 of the Health and Safety Code is amended to read:

113953.3. (a) Except as specified in subdivision (b), all employees shall thoroughly wash their hands and that portion, if any, of their arms exposed to direct food contact with cleanser and warm water by vigorously rubbing together the surfaces of their lathered hands and arms for at least 10 to 15 seconds and thoroughly rinsing with clean running water followed by drying of cleaned hands and that portion, if any, of their arms exposed. Employees shall pay particular attention to the areas underneath the fingernails and between the fingers. Employees shall wash their hands in all of the following instances:

(1) Immediately before engaging in food preparation, including working with nonprepackaged food, clean equipment and utensils, and unwrapped single-use food containers and utensils.

(2) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(3) After using the toilet room.

(4) After caring for or handling any animal allowed in a food facility pursuant to this part.

(5) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, using an electronic cigarette as defined in subdivision (c) of Section 22950.5 of the Business and Professions Code, eating, or drinking.

(6) After handling soiled equipment or utensils.

(7) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks.

(8) When switching between working with raw food and working with ready-to-eat food.

(9) Before initially donning gloves for working with food.

(10) Before dispensing or serving food or handling clean tableware and serving utensils in the food service area.

(11) After engaging in other activities that contaminate the hands.

(b) If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

SEC. 31. Section 113977 of the Health and Safety Code is amended to read:

113977. (a) Except as specified in subdivision (b), an employee shall eat, drink, use any form of tobacco, or use an electronic cigarette as defined in subdivision (c) of Section 22950.5 of the Business and Professions Code, only in designated areas where contamination of nonprepackaged food; clean equipment, utensils, and linens; unwrapped single-use articles; or other items needing protection cannot result.

(b) A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands, the container, nonprepackaged food, and food-contact surfaces.

SEC. 32. Section 113978 of the Health and Safety Code is amended to read:

113978. Food facilities shall have a sign that states both "no smoking" and "no using electronic cigarettes" posted in the food preparation, food storage, and warewashing areas.

SEC. 33. Section 114332.3 of the Health and Safety Code is amended to read:

114332.3. (a) A potentially hazardous food or beverage stored or prepared in a private home shall not be offered for sale, sold, or given away from a nonprofit charitable temporary food facility. Potentially hazardous food shall be prepared in a food establishment or on the premises of a nonprofit charitable temporary food facility.

(b) All food and beverage shall be protected at all times from unnecessary handling and shall be stored, displayed, and served so as to be protected from contamination.

(c) Potentially hazardous food and beverage shall be maintained at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.

1 (d) Ice used in beverages shall be protected from contamination
2 and shall be maintained separate from ice used for refrigeration
3 purposes.

4 (e) All food and food containers shall be stored off the floor on
5 shelving or pallets located within the facility.

6 (f) Smoking, or using an electronic cigarette as defined in
7 subdivision (c) of Section 22950.5 of the Business and Professions
8 Code, is prohibited in nonprofit charitable temporary food facilities.

9 (g) (1) Except as provided in paragraph (2), live animals, birds,
10 or fowl shall not be kept or allowed in nonprofit charitable
11 temporary food facilities.

12 (2) Paragraph (1) does not prohibit the presence, in any room
13 where food is served to the public, guests, or patrons, of a guide
14 dog, signal dog, or service dog, as defined by Section 54.1 of the
15 Civil Code, accompanied by a totally or partially blind person,
16 deaf person, person whose hearing is impaired, or handicapped
17 person, or dogs accompanied by persons licensed to train guide
18 dogs for the blind pursuant to Chapter 9.5 (commencing with
19 Section 7200) of Division 3 of the Business and Professions Code.

20 (3) Paragraph (1) does not apply to dogs under the control of
21 uniformed law enforcement officers or of uniformed employees
22 of private patrol operators and operators of a private patrol service
23 who are licensed pursuant to Chapter 11.5 (commencing with
24 Section 7580) of Division 3 of the Business and Professions Code,
25 while these employees are acting within the course and scope of
26 their employment as private patrol persons.

27 (4) The persons and operators described in paragraphs (2) and
28 (3) are liable for any damage done to the premises or facilities by
29 the dog.

30 (5) The dogs described in paragraphs (2) and (3) shall be
31 excluded from food preparation and utensil wash areas. Aquariums
32 and aviaries shall be allowed if enclosed so as not to create a public
33 health problem.

34 (h) All garbage shall be disposed of in a sanitary manner.

35 (i) Employees preparing or handling food shall wear clean
36 clothing and shall keep their hands clean at all times.

37 SEC. 34. Section 114371 of the Health and Safety Code is
38 amended to read:

39 114371. Certified farmers' markets shall meet all of the
40 following requirements:

1 (a) All food shall be stored at least six inches off the floor or
2 ground or under any other conditions that are approved. Tents,
3 canopies, or other overhead coverings are not required for fresh
4 whole produce sales displays or storage, except when specifically
5 required pursuant to this chapter. Flavored nuts and dried fruits
6 that are being sold on a bulk or nonprepackaged basis shall be
7 displayed and dispensed by the producer from covered containers.
8 All processed food products being sold shall be in compliance with
9 Section 113735 and the applicable provisions of Section 110460,
10 114365, or 114365.2.

11 (b) Food preparation is prohibited at certified farmers' markets
12 with the exception of food samples. Trimming whole produce for
13 sale shall not be considered food preparation. Distribution of food
14 samples may occur provided that the following sanitary conditions
15 exist:

16 (1) Samples shall be kept in clean, nonabsorbent, and covered
17 containers intended by the manufacturer for use with foods. Any
18 cutting or distribution of samples shall only occur under a tent,
19 canopy, or other overhead covering.

20 (2) All food samples shall be distributed by the producer in a
21 manner that is sanitary and in which each sample is distributed
22 without the possibility of a consumer touching the remaining
23 samples.

24 (3) Clean, disposable plastic gloves shall be used when cutting
25 food samples.

26 (4) Fresh, whole produce intended for sampling shall be washed
27 or cleaned in another manner of any soil or other material by
28 potable water in order that it is wholesome and safe for
29 consumption.

30 (5) Notwithstanding Section 114205, available potable water
31 may be required for handwashing and sanitizing; the need
32 determined and manner approved by the enforcement agency.

33 (6) Potentially hazardous food samples shall be maintained at
34 or below ~~45°F~~ *45 degrees Fahrenheit* and shall be disposed of
35 within two hours after cutting. A certified farmers' market or an
36 enforcement officer may cause immediate removal and disposal,
37 or confiscate and destroy, any potentially hazardous food samples
38 found not in compliance with this paragraph.

1 (7) Wastewater shall be disposed of in a facility connected to
2 the public sewer system or in a manner approved by the
3 enforcement agency.

4 (8) Utensils and cutting surfaces shall be smooth, nonabsorbent,
5 and easily cleanable, or single-use articles shall be utilized. If the
6 producer uses only single-use articles or maintains an adequate
7 supply of clean replacement articles readily available at the site at
8 the time of use, warewashing facilities shall not be required.

9 (c) Approved toilet and handwashing facilities shall be available
10 within 200 feet travel distance of the premises of the certified
11 farmers' market or as approved by the enforcement officer.

12 (d) No live animals, birds, or fowl shall be kept or allowed, and
13 no individual shall bring a live animal, bird, or fowl, within 20
14 feet of any area where food is stored or held for sale within a
15 certified farmers' market. This subdivision does not apply to guide
16 dogs, signal dogs, or service dogs when used in accordance with
17 the federal Americans with Disabilities Act of 1990 (42 U.S.C.
18 Sec. 12101 et seq.), and as provided in Section 36.104 of Title 28
19 of the Code of Federal Regulations. All guide dogs, signal dogs,
20 and service dogs shall be used and properly identified in accordance
21 with Section 54.1 and subdivision (b) of Section 54.2 of the Civil
22 Code, and Sections 30850, 30851, and 30852 of the Food and
23 Agricultural Code.

24 (e) All garbage and refuse shall be stored and disposed of in a
25 manner approved by the enforcement officer.

26 (f) Smoking of cigarettes, cigars, pipe tobacco, and other
27 nicotine products, or using an electronic cigarette as defined in
28 subdivision (c) of Section 22950.5 of the Business and Professions
29 Code, shall not be permitted within 25 feet of the common
30 commerce area comprised of sales personnel and shopping
31 customers of the certified farmers' market.

32 (g) Notwithstanding Chapter 10 (commencing with Section
33 114294) vendors selling food adjacent to, and under the jurisdiction
34 and management of, a certified farmers' market may store, display,
35 and sell from a table or display fixture apart from the mobile
36 facility in a manner approved by the enforcement agency.

37 (h) Temporary food facilities may be operated at a separate
38 community event adjacent to, and in conjunction with, certified
39 farmers' markets. The organization in control of the community

1 event at which these temporary food facilities operate shall comply
2 with Section 114381.1.

3 (i) All harvested, cut, wrapped, or otherwise processed meat,
4 poultry, and fish products shall be from approved sources as set
5 forth in Section 113735, and shall be properly labeled or have
6 documentation present at the point of sale that demonstrates
7 compliance with this requirement. All harvested, cut, wrapped, or
8 otherwise processed meat, poultry, and fish products offered for
9 sale shall be transported, stored, displayed, and maintained at a
10 temperature of ~~41° F~~ *41 degrees Fahrenheit* or colder. The
11 temperature holding capabilities of the storage containers used
12 shall be sufficient to maintain safe product temperatures. Storage
13 containers for meat, poultry, and fish products shall be insulated
14 and have interior surfaces that are smooth, nonabsorbent, and easily
15 cleanable. All meat, poultry, and fish products shall be stored in
16 a manner that reduces the risk of cross-contamination.

17 SEC. 35. Section 118910 of the Health and Safety Code is
18 amended to read:

19 118910. The Legislature declares its intent not to preempt the
20 field of regulation of the smoking of tobacco, or the use of an
21 electronic cigarette as defined in subdivision (c) of Section 22950.5
22 of the Business and Professions Code. A local governing body
23 may ban completely the smoking of tobacco or using an electronic
24 cigarette, or may regulate smoking or the using *of* an electronic
25 cigarette, in any manner not inconsistent with this article and
26 Article 3 (commencing with Section 118920) or any other provision
27 of state law.

28 SEC. 36. Section 118925 of the Health and Safety Code is
29 amended to read:

30 118925. It is unlawful for any person to smoke tobacco or any
31 other plant product, or use an electronic cigarette as defined in
32 subdivision (c) of Section 22950.5 of the Business and Professions
33 Code, in any vehicle of a passenger stage corporation, the National
34 Railroad Passenger Corporation (Amtrak) except to the extent
35 permitted by federal law, in any aircraft except to the extent
36 permitted by federal law, on a public transportation system, as
37 defined by Section 99211 of the Public Utilities Code, or in any
38 vehicle of an entity receiving any transit assistance from the state.

39 SEC. 37. Section 118930 of the Health and Safety Code is
40 amended to read:

1 118930. A notice prohibiting both smoking and using an
2 electronic cigarette as defined in subdivision (c) of Section 22950.5
3 of the Business and Professions Code, displayed as a symbol and
4 in English, shall be posted in each vehicle or aircraft subject to
5 this article.

6 SEC. 38. Section 118935 of the Health and Safety Code is
7 amended to read:

8 118935. (a) Every person and public agency providing
9 transportation services for compensation, including, but not limited
10 to, the National Railroad Passenger Corporation (Amtrak) to the
11 extent permitted by federal law, passenger stage corporations, and
12 local agencies that own or operate airports, shall designate and
13 post, by signs of sufficient number and posted in locations that
14 may be readily seen by persons within the area, a contiguous area
15 of not less than 75 percent of any area made available by the person
16 or public agency as a waiting room for these passengers where the
17 smoking of tobacco, or using an electronic cigarette as defined in
18 subdivision (c) of Section 22950.5 of the Business and Professions
19 Code, is prohibited. Not more than 25 percent of any given area
20 may be set aside for smokers or users of electronic cigarettes.

21 (b) Every person or public agency subject to subdivision (a)
22 shall also post, by sign of sufficient number and posted in locations
23 as to be readily seen by persons within the area of any building
24 where tickets, tokens, or other evidences that a fare has been paid
25 for transportation services that are provided by the person or public
26 agency, a notice that the smoking of tobacco, or use of an electronic
27 cigarette, by persons waiting in line to purchase the tickets, tokens,
28 or other evidences that a fare has been paid is prohibited.

29 (c) It is unlawful for any person to smoke, or use an electronic
30 cigarette, in an area posted pursuant to this section.

31 SEC. 39. Section 118948 of the Health and Safety Code is
32 amended to read:

33 118948. (a) It is unlawful for a person to smoke a pipe, cigar,
34 or cigarette in a motor vehicle, or use an electronic cigarette as
35 defined in subdivision (c) of Section 22950.5 of the Business and
36 Professions Code, whether in motion or at rest, in which there is
37 a minor.

38 (b) For the purposes of this section, “to smoke” means to have
39 in one’s immediate possession a lighted pipe, cigar, or cigarette
40 containing tobacco or any other plant.

(c) A violation of this section is an infraction punishable by a fine not exceeding one hundred dollars (\$100) for each violation.

SEC. 40. Section 119405 of the Health and Safety Code is amended to read:

119405. (a) To the extent not preempted by federal law, including, but not limited to, the regulation of electronic cigarettes by the United States Food and Drug Administration, it shall be unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined in subdivision (b), to a person under 18 years of age.

(b) “Electronic cigarette” means a device that can provide an inhalable dose of nicotine by delivering a vaporized solution.

(c) A violation of this section shall be an infraction punishable by a fine not exceeding two hundred dollars (\$200) for the first violation, by a fine not exceeding five hundred dollars (\$500) for the second violation, or by a fine not exceeding one thousand dollars (\$1,000) for a third or subsequent violation.

(d) Nothing in this section nor any other law shall be construed to invalidate an existing ordinance or, or prohibit the adoption of an ordinance by, a city or county that regulates the distribution of electronic cigarettes in a manner that is more restrictive than this section, to the extent that the ordinance is not otherwise prohibited by federal law.

~~SEC. 40.~~

SEC. 41. Section 119406 is added to the Health and Safety Code, to read:

119406. (a) All cartridges for electronic cigarettes and solutions for filling or refilling an electronic cigarette shall be in childproof packaging.

(b) “Childproof packaging” means packaging that contains elements, including, but not limited to, safety caps or blister packs, designed to protect children from being able to open and ingest the contents.

~~SEC. 41.~~

SEC. 42. Section 6404.5 of the Labor Code is amended to read:

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products, and the use of electronic cigarettes as defined in subdivision (c) of Section

1 22950.5 of the Business and Professions Code, in all (100 percent
2 of) enclosed places of employment in this state, as covered by this
3 section, thereby eliminating the need of local governments to enact
4 workplace smoking restrictions or electronic cigarette restrictions
5 within their respective jurisdictions. It is further the intent of the
6 Legislature to create a uniform statewide standard to restrict and
7 prohibit the smoking of tobacco products, and the use of electronic
8 cigarettes, in enclosed places of employment, as specified in this
9 section, in order to reduce employee exposure to environmental
10 tobacco smoke to a level that will prevent anything other than
11 insignificantly harmful effects to exposed employees, and also to
12 eliminate the confusion and hardship that can result from enactment
13 or enforcement of disparate local workplace smoking restrictions.
14 Notwithstanding any other provision of this section, it is the intent
15 of the Legislature that any area not defined as a “place of
16 employment” pursuant to subdivision (d) or in which the smoking
17 of tobacco products or use of electronic cigarettes is not regulated
18 pursuant to subdivision (e) shall be subject to local regulation of
19 smoking of tobacco products or use of electronic cigarettes.

20 (b) No employer shall knowingly or intentionally permit, and
21 no person shall engage in, the smoking of tobacco products or
22 using an electronic cigarette in an enclosed space at a place of
23 employment. “Enclosed space” includes lobbies, lounges, waiting
24 areas, elevators, stairwells, and restrooms that are a structural part
25 of the building and not specifically defined in subdivision (d).

26 (c) For purposes of this section, an employer who permits any
27 nonemployee access to his or her place of employment on a regular
28 basis has not acted knowingly or intentionally in violation of this
29 section if he or she has taken the following reasonable steps to
30 prevent smoking by a nonemployee:

31 (1) Posted clear and prominent signs, as follows:

32 (A) Where smoking or using an electronic cigarette is prohibited
33 throughout the building or structure, a sign that states both “no
34 smoking” and “no using electronic cigarettes” shall be posted at
35 each entrance to the building or structure.

36 (B) Where smoking or using an electronic cigarette is permitted
37 in designated areas of the building or structure, a sign stating
38 “Smoking or using an electronic cigarette, is prohibited except in
39 designated areas” shall be posted at each entrance to the building
40 or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking or using an electronic cigarette refrain from smoking or using an electronic cigarette in the enclosed workplace.

For purposes of this subdivision, “reasonable steps” does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking or using an electronic cigarette, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, “place of employment” does not include any of the following:

(1) Sixty-five percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking or using an electronic cigarette by the establishment. An establishment may permit smoking or using an electronic cigarette in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, “lobby” means the common public area of an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment’s guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking or using an electronic cigarette is not permitted in a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking or using an electronic cigarette in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops, retail or wholesale electronic cigarette shops, and private smokers’ lounges. For purposes of this paragraph:

1 (A) “Private smokers’ lounge” means any enclosed area in or
2 attached to a retail or wholesale tobacco shop that is dedicated to
3 the use of tobacco products, including, but not limited to, cigars
4 and pipes.

5 (B) “Retail or wholesale tobacco shop” means any business
6 establishment the main purpose of which is the sale of tobacco
7 products, including, but not limited to, cigars, pipe tobacco, and
8 smoking accessories.

9 (C) “Retail or wholesale electronic cigarette shop” means any
10 business establishment the main purpose of which is the sale of
11 electronic cigarettes.

12 (5) Cabs of motortrucks, as defined in Section 410 of the Vehicle
13 Code, or truck tractors, as defined in Section 655 of the Vehicle
14 Code, if no nonsmoking employees, or employees who do not use
15 electronic cigarettes, are present.

16 (6) Warehouse facilities. For purposes of this paragraph,
17 “warehouse facility” means a warehouse facility with more than
18 100,000 square feet of total floorspace, and 20 or fewer full-time
19 employees working at the facility, but does not include any area
20 within a facility that is utilized as office space.

21 (7) Gaming clubs, in which smoking or using an electronic
22 cigarette is permitted by subdivision (f). For purposes of this
23 paragraph, “gaming club” means any gaming club, as defined in
24 Section 19802 of the Business and Professions Code, or bingo
25 facility, as defined in Section 326.5 of the Penal Code, that restricts
26 access to minors under 18 years of age.

27 (8) Bars and taverns, in which smoking or using an electronic
28 cigarette is permitted by subdivision (f). For purposes of this
29 paragraph, “bar” or “tavern” means a facility primarily devoted to
30 the serving of alcoholic beverages for consumption by guests on
31 the premises, in which the serving of food is incidental. “Bar or
32 tavern” includes those facilities located within a hotel, motel, or
33 other similar transient occupancy establishment. However, when
34 located within a building in conjunction with another use, including
35 a restaurant, “bar” or “tavern” includes only those areas used
36 primarily for the sale and service of alcoholic beverages. “Bar” or
37 “tavern” does not include the dining areas of a restaurant, regardless
38 of whether alcoholic beverages are served therein.

39 (9) Theatrical production sites, if smoking or using an electronic
40 cigarette is an integral part of the story in the theatrical production.

1 (10) Medical research or treatment sites, if smoking or using
2 an electronic cigarette is integral to the research and treatment
3 being conducted.

4 (11) Private residences, except for private residences licensed
5 as family day care homes, where smoking or using an electronic
6 cigarette is prohibited pursuant to Section 1596.795 of the Health
7 and Safety Code.

8 (12) Patient smoking areas in long-term health care facilities,
9 as defined in Section 1418 of the Health and Safety Code.

10 (13) Breakrooms designated by employers for smoking or using
11 an electronic cigarette, provided that all of the following conditions
12 are met:

13 (A) Air from the room shall be exhausted directly to the outside
14 by an exhaust fan. Air from the room shall not be recirculated to
15 other parts of the building.

16 (B) The employer shall comply with any ventilation standard
17 or other standard utilizing appropriate technology, including, but
18 not limited to, mechanical, electronic, and biotechnical systems,
19 adopted by the Occupational Safety and Health Standards Board
20 or the federal Environmental Protection Agency. If both adopt
21 inconsistent standards, the ventilation standards of the Occupational
22 Safety and Health Standards Board shall be no less stringent than
23 the standards adopted by the federal Environmental Protection
24 Agency.

25 (C) The room shall be located in a nonwork area where no one,
26 as part of his or her work responsibilities, is required to enter. For
27 purposes of this subparagraph, “work responsibilities” does not
28 include any custodial or maintenance work carried out in the
29 breakroom when it is unoccupied.

30 (D) There are sufficient nonsmoking breakrooms to
31 accommodate nonsmokers and individuals who do not use
32 electronic cigarettes.

33 (14) Employers with a total of five or fewer employees, either
34 full time or part time, may permit smoking or using an electronic
35 cigarette where all of the following conditions are met:

36 (A) The area is not accessible to minors.

37 (B) All employees who enter the area consent to permit smoking
38 or using an electronic cigarette. No one, as part of his or her work
39 responsibilities, shall be required to work in an area where smoking
40 or using an electronic cigarette is permitted. An employer who is

1 determined by the division to have used coercion to obtain consent
2 or who has required an employee to work in the area shall be
3 subject to the penalty provisions of Section 6427.

4 (C) Air from the area shall be exhausted directly to the outside
5 by an exhaust fan. Air from the area shall not be recirculated to
6 other parts of the building.

7 (D) The employer shall comply with any ventilation standard
8 or other standard utilizing appropriate technology, including, but
9 not limited to, mechanical, electronic, and biotechnical systems,
10 adopted by the Occupational Safety and Health Standards Board
11 or the federal Environmental Protection Agency. If both adopt
12 inconsistent standards, the ventilation standards of the Occupational
13 Safety and Health Standards Board shall be no less stringent than
14 the standards adopted by the federal Environmental Protection
15 Agency.

16 This paragraph shall not be construed to (i) supersede or render
17 inapplicable any condition or limitation on areas made applicable
18 to specific types of business establishments by any other paragraph
19 of this subdivision or (ii) apply in lieu of any otherwise applicable
20 paragraph of this subdivision that has become inoperative.

21 (e) Paragraphs (13) and (14) of subdivision (d) shall not be
22 construed to require employers to provide reasonable
23 accommodation to smokers or individuals who use electronic
24 cigarettes, or to provide breakrooms for smokers or nonsmokers.

25 (f) (1) Except as otherwise provided in this subdivision,
26 smoking or using an electronic cigarette may be permitted in
27 gaming clubs, as defined in paragraph (7) of subdivision (d), and
28 in bars and taverns, as defined in paragraph (8) of subdivision (d),
29 until the earlier of the following:

30 (A) January 1, 1998.

31 (B) The date of adoption of a regulation (i) by the Occupational
32 Safety and Health Standards Board reducing the permissible
33 employee exposure level to environmental tobacco smoke or
34 electronic cigarette vapor to a level that will prevent anything other
35 than insignificantly harmful effects to exposed employees or (ii)
36 by the federal Environmental Protection Agency establishing a
37 standard for reduction of permissible exposure to environmental
38 tobacco smoke or electronic cigarette vapor to an exposure level
39 that will prevent anything other than insignificantly harmful effects
40 to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking or using an electronic cigarette may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking or using an electronic cigarette in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall become inoperative on and after January 1, 1998, until a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking or using an electronic cigarette may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking or using an electronic cigarette in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

1 (A) If practicable, the gaming club or bar or tavern shall
2 establish a designated nonsmoking area.

3 (B) If feasible, no employee shall be required, in the
4 performance of ordinary work responsibilities, to enter any area
5 in which smoking is permitted.

6 (g) The smoking and electronic cigarette prohibition set forth
7 in this section shall constitute a uniform statewide standard for
8 regulating the smoking of tobacco products, or using an electronic
9 cigarette, in enclosed places of employment and shall supersede
10 and render unnecessary the local enactment or enforcement of
11 local ordinances regulating the smoking of tobacco products, or
12 using an electronic cigarette, in enclosed places of employment.
13 Insofar as the smoking and electronic cigarette prohibition set forth
14 in this section is applicable to all ~~(100-percent)~~ (100 percent) places
15 of employment within this state and, therefore, provides the
16 maximum degree of coverage, the practical effect of this section
17 is to eliminate the need of local governments to enact enclosed
18 workplace smoking restrictions or electronic cigarette restrictions
19 within their respective jurisdictions.

20 (h) Nothing in this section shall prohibit an employer from
21 prohibiting smoking or using an electronic cigarette in an enclosed
22 place of employment for any reason.

23 (i) The enactment of local regulation of smoking of tobacco
24 products, or using an electronic cigarette, in enclosed places of
25 employment by local governments shall be suspended only for as
26 long as, and to the extent that, the ~~(100-percent)~~ (100 percent)
27 smoking and electronic cigarette prohibition provided for in this
28 section remains in effect. In the event this section is repealed or
29 modified by subsequent legislative or judicial action so that the
30 ~~(100-percent)~~ (100 percent) smoking and electronic cigarette
31 prohibition is no longer applicable to all enclosed places of
32 employment in California, local governments shall have the full
33 right and authority to enforce previously enacted, and to enact and
34 enforce new, restrictions on the smoking of tobacco products, or
35 using an electronic cigarette, in enclosed places of employment
36 within their jurisdictions, including a complete prohibition of
37 smoking or using an electronic cigarette. Notwithstanding any
38 other provision of this section, any area not defined as a “place of
39 employment” or in which smoking or using an electronic cigarette
40 is not regulated pursuant to subdivision (d) or (e), shall be subject

1 to local regulation of smoking of tobacco products or using an
2 electronic cigarette.

3 (j) Any violation of the prohibition set forth in subdivision (b)
4 is an infraction, punishable by a fine not to exceed one hundred
5 dollars (\$100) for a first violation, two hundred dollars (\$200) for
6 a second violation within one year, and five hundred dollars (\$500)
7 for a third and for each subsequent violation within one year. This
8 subdivision shall be enforced by local law enforcement agencies,
9 including, but not limited to, local health departments, as
10 determined by the local governing body.

11 (k) Notwithstanding Section 6309, the division shall not be
12 required to respond to any complaint regarding the smoking of
13 tobacco products, or using an electronic cigarette, in an enclosed
14 space at a place of employment, unless the employer has been
15 found guilty pursuant to subdivision (j) of a third violation of
16 subdivision (b) within the previous year.

17 (l) If any provision of this act or the application thereof to any
18 person or circumstances is held invalid, that invalidity shall not
19 affect other provisions or applications of the act that can be given
20 effect without the invalid provision or application, and to this end
21 the provisions of this act are severable.

22 ~~SEC. 42.~~

23 *SEC. 43.* Section 308 of the Penal Code is amended to read:

24 308. (a) (1) Every person, firm, or corporation that knowingly
25 or under circumstances in which it has knowledge, or should
26 otherwise have grounds for knowledge, sells, gives, or in any way
27 furnishes to another person who is under the age of 18 years *21*
28 *years of age* any tobacco, cigarette, electronic cigarette, or cigarette
29 papers, or blunts wraps, or any other preparation of tobacco, or
30 any other instrument or paraphernalia that is designed for the
31 smoking or ingestion of tobacco, products prepared from tobacco,
32 or any controlled substance, is subject to either a criminal action
33 for a misdemeanor or to a civil action brought by a city attorney,
34 a county counsel, or a district attorney, punishable by a fine of two
35 hundred dollars (\$200) for the first offense, five hundred dollars
36 (\$500) for the second offense, and one thousand dollars (\$1,000)
37 for the third offense.

38 Notwithstanding Section 1464 or any other law, 25 percent of
39 each civil and criminal penalty collected pursuant to this
40 subdivision shall be paid to the office of the city attorney, county

1 counsel, or district attorney, whoever is responsible for bringing
2 the successful action, and 25 percent of each civil and criminal
3 penalty collected pursuant to this subdivision shall be paid to the
4 city or county for the administration and cost of the community
5 service work component provided in subdivision (b).

6 Proof that a defendant, or his or her employee or agent,
7 demanded, was shown, and reasonably relied upon evidence of
8 majority shall be defense to any action brought pursuant to this
9 subdivision. Evidence of majority of a person is a facsimile of or
10 a reasonable likeness of a document issued by a federal, state,
11 county, or municipal government, or subdivision or agency thereof,
12 including, but not limited to, a motor vehicle operator's license, a
13 registration certificate issued under the federal Selective Service
14 Act, or an identification card issued to a member of the Armed
15 Forces.

16 For purposes of this section, the person liable for selling or
17 furnishing tobacco products to ~~minors~~ *persons under 21 years of*
18 *age* by a tobacco vending machine shall be the person authorizing
19 the installation or placement of the tobacco vending machine upon
20 premises he or she manages or otherwise controls and under
21 circumstances in which he or she has knowledge, or should
22 otherwise have grounds for knowledge, that the tobacco vending
23 machine will be utilized by ~~minors~~ *persons under 21 years of age*.

24 (2) For purposes of this section, "blunt wraps" means cigar
25 papers or cigar wrappers of all types that are designed for smoking
26 or ingestion of tobacco products and contain less than 50 percent
27 tobacco.

28 (b) Every person ~~under the age of 18~~ *21 years of age* who
29 purchases, receives, or possesses any tobacco, cigarette, electronic
30 cigarette, or cigarette papers, or any other preparation of tobacco,
31 or any other instrument or paraphernalia that is designed for the
32 smoking of tobacco, products prepared from tobacco, or any
33 controlled substance shall, upon conviction, be punished by a fine
34 of seventy-five dollars (\$75) or 30 hours of community service
35 work.

36 (c) Every person, firm, or corporation that sells, or deals in
37 tobacco or any preparation thereof, and, on and after July 1, 2016,
38 every person, firm, or corporation that sells or deals in electronic
39 cigarettes, shall post conspicuously and keep so posted in his, her,
40 or their place of business at each point of purchase the notice

1 required pursuant to subdivision (b) of Section 22952 of the
2 Business and Professions Code, and any person failing to do so
3 shall, upon conviction, be punished by a fine of fifty dollars (\$50)
4 for the first offense, one hundred dollars (\$100) for the second
5 offense, two hundred fifty dollars (\$250) for the third offense, and
6 five hundred dollars (\$500) for the fourth offense and each
7 subsequent violation of this provision, or by imprisonment in a
8 county jail not exceeding 30 days.

9 (d) For purposes of determining the liability of persons, firms,
10 or corporations controlling franchises or business operations in
11 multiple locations for the second and subsequent violations of this
12 section, each individual franchise or business location shall be
13 deemed a separate entity.

14 (e) Notwithstanding subdivision (b), any person under 21
15 years of age who purchases, receives, or possesses any tobacco,
16 cigarette, electronic cigarette, or cigarette papers, or any other
17 preparation of tobacco, any other instrument or paraphernalia that
18 is designed for the smoking of tobacco, or products prepared from
19 tobacco is immune from prosecution for that purchase, receipt, or
20 possession while participating in either of the following:

21 (1) An enforcement activity that complies with the guidelines
22 adopted pursuant to subdivisions (c) and (d) of Section 22952 of
23 the Business and Professions Code.

24 (2) An activity conducted by the State Department of Public
25 Health, a local health department, or a law enforcement agency
26 for the purpose of determining or evaluating youth tobacco
27 purchase rates.

28 (f) It is the Legislature's intent to regulate the subject matter of
29 this section. As a result, a city, county, or city and county shall not
30 adopt any ordinance or regulation inconsistent with this section.

31 ~~SEC. 43.~~

32 *SEC. 44.* Section 640 of the Penal Code is amended to read:

33 640. (a) (1) Any of the acts described in paragraphs (1) to (6),
34 inclusive, of subdivision (b) is an infraction punishable by a fine
35 not to exceed two hundred fifty dollars (\$250) and by community
36 service for a total time not to exceed 48 hours over a period not to
37 exceed 30 days, during a time other than during the violator's hours
38 of school attendance or employment. Any of the acts described in
39 paragraphs (1) to (3), inclusive, of subdivision (c), upon a first or
40 second violation, is an infraction punishable by a fine not to exceed

1 two hundred fifty dollars (\$250) and by community service for a
2 total time not to exceed 48 hours over a period not to exceed 30
3 days, during a time other than during the violator's hours of school
4 attendance or employment. A third or subsequent violation of any
5 of the acts described in paragraphs (1) to (3), inclusive, of
6 subdivision (c) is a misdemeanor punishable by a fine of not more
7 than four hundred dollars (\$400) or by imprisonment in a county
8 jail for a period of not more than 90 days, or by both that fine and
9 imprisonment. Any of the acts described in subdivision (d) shall
10 be punishable by a fine of not more than four hundred dollars
11 (\$400), by imprisonment in a county jail for a period of not more
12 than 90 days, or by both that fine and imprisonment.

13 (2) This section shall apply only to acts committed on or in a
14 facility or vehicle of a public transportation system.

15 (b) (1) Eating or drinking in or on a system facility or vehicle
16 in areas where those activities are prohibited by that system.

17 (2) Disturbing another person by loud or unreasonable noise.

18 (3) Smoking, or using an electronic cigarette as defined in
19 subdivision (c) of Section 22950.5 of the Business and Professions
20 Code, in or on a system facility or vehicle in areas where those
21 activities are prohibited by that system.

22 (4) Expectorating upon a system facility or vehicle.

23 (5) Skateboarding, roller skating, bicycle riding, roller blading,
24 or operating a motorized scooter or similar device, as defined in
25 Section 407.5 of the Vehicle Code in a system facility, vehicle, or
26 parking structure. This paragraph does not apply to an activity that
27 is necessary for utilization of the transit facility by a bicyclist,
28 including, but not limited to, an activity that is necessary for
29 parking a bicycle or transporting a bicycle aboard a transit vehicle,
30 if that activity is conducted with the permission of the transit
31 agency in a manner that does not interfere with the safety of the
32 bicyclist or other patrons of the transit facility.

33 (6) Sale or peddling of any goods, merchandise, property, or
34 services of any kind whatsoever on the facilities, vehicles, or
35 property of the public transportation system, if the public
36 transportation system has prohibited those acts and neither the
37 public transportation system nor its duly authorized representatives
38 have granted written consent to engage in those acts.

39 (c) (1) Evasion of the payment of a fare of the system. For
40 purposes of this section, fare evasion includes entering an enclosed

1 area of a public transit facility beyond posted signs prohibiting
2 entrance without obtaining valid fare, in addition to entering a
3 transit vehicle without valid fare.

4 (2) Misuse of a transfer, pass, ticket, or token with the intent to
5 evade the payment of a fare.

6 (3) (A) Unauthorized use of a discount ticket or failure to
7 present, upon request from a transit system representative,
8 acceptable proof of eligibility to use a discount ticket, in
9 accordance with Section 99155 of the Public Utilities Code and
10 posted system identification policies when entering or exiting a
11 transit station or vehicle. Acceptable proof of eligibility must be
12 clearly defined in the posting.

13 (B) In the event that an eligible discount ticket user is not in
14 possession of acceptable proof at the time of request, any citation
15 issued shall be held for a period of 72 hours to allow the user to
16 produce acceptable proof. If the proof is provided, the citation
17 shall be voided. If the proof is not produced within that time period,
18 the citation shall be processed.

19 (d) (1) Willfully disturbing others on or in a system facility or
20 vehicle by engaging in boisterous or unruly behavior.

21 (2) Carrying an explosive, acid, or flammable liquid in a public
22 transit facility or vehicle.

23 (3) Urinating or defecating in a system facility or vehicle, except
24 in a lavatory. However, this paragraph shall not apply to a person
25 who cannot comply with this paragraph as a result of a disability,
26 age, or a medical condition.

27 (4) Willfully blocking the free movement of another person in
28 a system facility or vehicle. This paragraph shall not be interpreted
29 to affect any lawful activities permitted or First Amendment rights
30 protected under the laws of this state or applicable federal law,
31 including, but not limited to, laws related to collective bargaining,
32 labor relations, or labor disputes.

33 (5) Willfully tampering with, removing, displacing, injuring,
34 or destroying any part of any facility or vehicle of a public
35 transportation system.

36 (e) Notwithstanding subdivision (a), a public transportation
37 agency, as defined in paragraph (4) of subdivision (c) of Section
38 99580 of the Public Utilities Code, may enact and enforce an
39 ordinance providing that a person who is the subject of a citation
40 for any of the acts described in subdivision (b) of Section 99580

1 of the Public Utilities Code on or in a facility or vehicle described
2 in subdivision (a) for which the public transportation agency has
3 jurisdiction shall, under the circumstances set forth by the
4 ordinance, be afforded an opportunity to complete an administrative
5 process that imposes only an administrative penalty enforced in a
6 civil proceeding. The ordinance for imposing and enforcing the
7 administrative penalty shall be governed by Chapter 8
8 (commencing with Section 99580) of Part 11 of Division 10 of
9 the Public Utilities Code and shall not apply to minors.

10 (f) For purposes of this section, a “facility or vehicle of a public
11 transportation system” means any of the following:

12 (1) A facility or vehicle of a public transportation system as
13 defined by Section 99211 of the Public Utilities Code.

14 (2) A facility of, or vehicle operated by any entity subsidized
15 by, the Department of Transportation.

16 (3) A facility or vehicle of the Southern California Regional
17 Rail Authority, whether owned or leased.

18 (4) A leased or rented facility or vehicle for which any of the
19 entities described in paragraph (1), (2), or (3) incurs costs of
20 cleanup, repair, or replacement as a result of any of those acts.

21 ~~SEC. 44.~~

22 *SEC. 45.* Section 561 of the Public Utilities Code is amended
23 to read:

24 561. (a) Every railroad corporation, passenger stage
25 corporation, passenger air carrier, and street railroad corporation
26 providing departures originating in this state shall prohibit the
27 smoking of any tobacco product, and using an electronic cigarette
28 as defined in subdivision (c) of Section 22950.5 of the Business
29 and Professions Code, in the passenger seating area of every
30 passenger car, passenger stage, aircraft, or other vehicle.

31 (b) Every such corporation and carrier shall display in the
32 passenger seating area of every passenger car, passenger stage,
33 aircraft, or other vehicle, notices sufficient in number, posted in
34 such locations as to be readily seen by boarding passengers,
35 advising passengers of the no smoking requirements and no using
36 electronic cigarette requirements pursuant to subdivision (a). Words
37 on such notices which state both “no smoking” and “no using
38 electronic cigarettes” or an equivalent phrase shall be at least
39 three-quarters of one inch high, and any other explanatory words
40 on the notices shall be at least one-quarter of an inch high.

1 (c) No person shall smoke any tobacco product, or use an
2 electronic cigarette, in a space known by him or her to be
3 designated for nonsmoking passengers. A violation of this
4 subdivision is not a crime.

5 (d) As used in this section, “passenger air carrier” shall have
6 the same meaning as provided in Sections 2741 and 2743.

7 ~~SEC. 45.~~

8 *SEC. 46.* Section 99580 of the Public Utilities Code is amended
9 to read:

10 99580. (a) Pursuant to subdivision (e) of Section 640 of the
11 Penal Code, a public transportation agency may enact and enforce
12 an ordinance to impose and enforce an administrative penalty for
13 any of the acts described in subdivision (b). The ordinance shall
14 include the provisions of this chapter and shall not apply to minors.

15 (b) (1) Evasion of the payment of a fare of the system.

16 (2) Misuse of a transfer, pass, ticket, or token with the intent to
17 evade the payment of a fare.

18 (3) Playing sound equipment on or in a system facility or
19 vehicle.

20 (4) Smoking, using an electronic cigarette as defined in
21 subdivision (c) of Section 22950.5 of the Business and Professions
22 Code, eating, or drinking in or on a system facility or vehicle in
23 those areas where those activities are prohibited by that system.

24 (5) Expectorating upon a system facility or vehicle.

25 (6) Willfully disturbing others on or in a system facility or
26 vehicle by engaging in boisterous or unruly behavior.

27 (7) Carrying an explosive or acid, flammable liquid, or toxic or
28 hazardous material in a system facility or vehicle.

29 (8) Urinating or defecating in a system facility or vehicle, except
30 in a lavatory. However, this paragraph shall not apply to a person
31 who cannot comply with this paragraph as a result of a disability,
32 age, or a medical condition.

33 (9) (A) Willfully blocking the free movement of another person
34 in a system facility or vehicle.

35 (B) This paragraph shall not be interpreted to affect any lawful
36 activities permitted or ~~first amendment~~ *First Amendment* rights
37 protected under the laws of this state or applicable federal law,
38 including, but not limited to, laws related to collective bargaining,
39 labor relations, or labor disputes.

(10) Skateboarding, roller skating, bicycle riding, or roller blading in a system facility, including a parking structure, or in a system vehicle. This paragraph does not apply to an activity that is necessary for utilization of a system facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a system vehicle, if that activity is conducted with the permission of the agency of the system in a manner that does not interfere with the safety of the bicyclist or other patrons of the system facility.

(11) (A) Unauthorized use of a discount ticket or failure to present, upon request from a system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155, and posted system identification policies when entering or exiting a system station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, an issued notice of fare evasion or passenger conduct violation shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, that notice shall be voided. If the proof is not produced within that time period, that notice shall be processed.

(12) Sale or peddling of any goods, merchandise, property, or services of any kind whatsoever on the facilities, vehicles, or property of the public transportation system without the express written consent of the public transportation system or its duly authorized representatives.

(c) (1) The public transportation agency may contract with a private vendor or governmental agency for the processing of notices of fare evasion or passenger conduct violation, and notices of delinquent fare evasion or passenger conduct violation pursuant to Section 99581.

(2) For the purpose of this chapter, “processing agency” means either of the following:

(A) The agency issuing the notice of fare evasion or passenger conduct violation and the notice of delinquent fare evasion or passenger conduct violation.

(B) The party responsible for processing the notice of fare evasion or passenger conduct violation and the notice of delinquent violation, if a contract is entered into pursuant to paragraph (1).

1 (3) For the purpose of this chapter, “fare evasion or passenger
2 conduct violation penalty” includes, but is not limited to, a late
3 payment penalty, administrative fee, fine, assessment, and costs
4 of collection as provided for in the ordinance.

5 (4) For the purpose of this chapter, “public transportation
6 agency” shall mean a public agency that provides public
7 transportation as defined in paragraph (1) of subdivision (f) of
8 Section 1 of Article XIX A of the California Constitution.

9 (5) All fare evasion and passenger conduct violation penalties
10 collected pursuant to this chapter shall be deposited in the general
11 fund of the county in which the citation is administered.

12 (d) (1) If a fare evasion or passenger conduct violation is
13 observed by a person authorized to enforce the ordinance, a notice
14 of fare evasion or passenger conduct violation shall be issued. The
15 notice shall set forth the violation, including reference to the
16 ordinance setting forth the administrative penalty, the date of the
17 violation, the approximate time, and the location where the
18 violation occurred. The notice shall include a printed statement
19 indicating the date payment is required to be made, and the
20 procedure for contesting the notice. The notice shall be served by
21 personal service upon the violator. The notice, or copy of the
22 notice, shall be considered a record kept in the ordinary course of
23 business of the issuing agency and the processing agency, and
24 shall be prima facie evidence of the facts contained in the notice
25 establishing a rebuttable presumption affecting the burden of
26 producing evidence.

27 (2) When a notice of fare evasion or passenger conduct violation
28 has been served, the person issuing the notice shall file the notice
29 with the processing agency.

30 (3) If, after a notice of fare evasion or passenger conduct
31 violation is issued pursuant to this section, the issuing officer
32 determines that there is incorrect data on the notice, including, but
33 not limited to, the date or time, the issuing officer may indicate in
34 writing on a form attached to the original notice the necessary
35 correction to allow for the timely entry of the corrected notice on
36 the processing agency’s data system. A copy of the correction shall
37 be mailed to the address provided by the person cited at the time
38 the original notice of fare evasion or passenger conduct violation
39 was served.

1 (4) If a person contests a notice of fare evasion or passenger
2 conduct violation, the issuing agency shall proceed in accordance
3 with Section 99581.

4 (e) In setting the amounts of administrative penalties for the
5 violations listed in subdivision (b), the public transportation agency
6 shall not establish penalty amounts that exceed the maximum fine
7 amount set forth in Section 640 of the Penal Code.

8 (f) A person who receives a notice of fare evasion or passenger
9 conduct violation pursuant to this section shall not be subject to
10 citation for a violation of Section 640 of the Penal Code.

11 (g) If an entity enacts an ordinance pursuant to this section it
12 shall, both two years and five years after enactment of the
13 ordinance, report all of the following information to the Senate
14 Committee on Transportation and Housing and the Assembly
15 Committee on Transportation:

16 (1) A description of the ordinance, including the circumstances
17 under which an alleged violator is afforded the opportunity to
18 complete the administrative process.

19 (2) The amount of the administrative penalties.

20 (3) The number and types of citations administered pursuant to
21 the ordinance.

22 (4) To the extent available, a comparison of the number and
23 types of citations administered pursuant to the ordinance with the
24 number and types of citations issued for similar offenses and
25 administered through the courts both in the two years prior to the
26 ordinance and, if any, since enactment of the ordinance.

27 (5) A discussion of the effect of the ordinance on passenger
28 behavior.

29 (6) A discussion of the effect of the ordinance on revenues to
30 the entity described in subdivision (a) and, in consultation with
31 the superior courts, the cost savings to the county courts. The
32 superior courts are encouraged to collaborate on and provide data
33 for this report.

34 ~~SEC. 46.~~

35 *SEC. 47.* Section 12523 of the Vehicle Code is amended to
36 read:

37 12523. (a) A person shall not operate a youth bus without
38 having in possession a valid driver's license of the appropriate
39 class, endorsed for passenger transportation and a certificate issued
40 by the department to permit the operation of a youth bus.

(b) Applicants for a certificate to drive a youth bus shall present evidence that they have successfully completed a driver training course administered by or at the direction of their employer consisting of a minimum of 10 hours of classroom instruction covering applicable laws and regulations and defensive driving practices and a minimum of 10 hours of behind-the-wheel training in a vehicle to be used as a youth bus. Applicants seeking to renew a certificate to drive a youth bus shall present evidence that they have received two hours of refresher training during each 12 months of driver certificate validity.

(c) The driver certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol, and upon payment of a fee of twenty-five dollars (\$25) for an original certificate and twelve dollars (\$12) for the renewal of that certificate to the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol. The Department of Motor Vehicles may deny, suspend, or revoke a certificate valid for driving a youth bus for the causes specified in this code or in regulations adopted pursuant to this code.

(d) An operator of a youth bus shall, at all times when operating a youth bus, do all of the following:

(1) Use seat belts.

(2) Refrain from smoking, or using an electronic cigarette as defined in subdivision (c) of Section 22950.5 of the Business and Professions Code.

(3) Report any accidents reportable under Section 16000 to the Department of the California Highway Patrol.

(e) A person holding a valid certificate to permit the operation of a youth bus, issued prior to January 1, 1991, shall not be required to reapply for a certificate to satisfy any additional requirements imposed by the act adding this subdivision until the certificate he or she holds expires or is canceled or revoked.

~~SEC. 47.~~

SEC. 48. Section 12523.5 of the Vehicle Code is amended to read:

12523.5. (a) A person shall not operate a general public paratransit vehicle unless he or she has in his or her possession a valid driver's license of the appropriate class endorsed for

1 passenger transportation when operating a vehicle designed, used,
2 or maintained for carrying more than 10 persons including the
3 driver and either (1) a certificate issued by the department to permit
4 the operation of a general public paratransit vehicle, or (2) a
5 certificate issued by the department to drive a schoolbus or school
6 pupil activity bus pursuant to Section 12517.

7 (b) Applicants for a certificate to drive a general public
8 paratransit vehicle shall pay a fee to the Department of the
9 California Highway Patrol of twenty-five dollars (\$25) for an
10 original certificate and twelve dollars (\$12) for a renewal
11 certificate. Applicants for an original certificate shall present
12 evidence that they have successfully completed a driver training
13 course consisting of a minimum of 40 hours of instruction within
14 the previous two years. The instruction shall have covered
15 applicable laws and regulations and defensive driving practices,
16 a minimum of 8 hours of certified defensive driving, and a
17 minimum of 20 hours of behind-the-wheel training in a vehicle to
18 be used as a general public paratransit vehicle. Applicants seeking
19 to renew a certificate valid for driving a general public paratransit
20 vehicle shall present evidence that they have received two hours
21 of refresher training during each 12 months of driver certificate
22 validity.

23 (c) The driver certificate shall be issued only to applicants
24 qualified by examinations prescribed by the Department of Motor
25 Vehicles and the Department of the California Highway Patrol.
26 The examinations shall be conducted by the Department of the
27 California Highway Patrol. The Department of Motor Vehicles
28 may deny, suspend, or revoke a certificate valid for driving a
29 general public paratransit vehicle for the causes specified in this
30 code or the Education Code or in regulations adopted pursuant to
31 this code or the Education Code.

32 (d) An operator of a general public paratransit vehicle shall do
33 all of the following:

34 (1) Use seatbelts.

35 (2) Refrain from smoking, or using an electronic cigarette as
36 defined in subdivision (c) of Section 22950.5 of the Business and
37 Professions Code.

38 (3) Report any accident reportable under Section 16000 to the
39 Department of the California Highway Patrol.

1 (e) A person holding a valid certificate to permit the operation
2 of a general public paratransit vehicle, issued prior to January 1,
3 1991, shall not be required to reapply for a certificate to satisfy
4 any additional requirements imposed by the act adding this
5 subdivision until the certificate he or she holds expires or is
6 canceled or revoked.

7 ~~SEC. 48.~~

8 *SEC. 49.* No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.